SUPREME COURT OF THE UNITED STATES.

No. 132.

THE UNITED STATES, APPELLANT,

vs.

JOSEPH LAWTON, EXECUTOR OF CHARLES LAWTON, MARTHA POLLARD, HANNAH MARIA KERSHAW, WIFE OF JAMES KERSHAW, AND AL.

ON APPEAL FROM THE SUPERIOR COURT OF EAST FLORIDA.

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Before the honorable Isaac H. Bronson, judge of the superior court for the district of East Florida, and specially authorised to receive and adjudicate claims and titles to land within said district.

Be it remembered, that on the twenty-second day of May, in the year of our Lord one thousand eight hundred and twenty-nine, James Darley, by Joseph B. Lancaster, his solicitor, brought and filed in the clerk's office of the superior court of said district of East Florida, his petition or claim to certain land therein mentioned; which said petition or claim is in the words and figures following, to wit:

Petition to the court.

TERRITORY OF FLORIDA,

Eastern district, superior court, sct:

To the honorable the judge of the superior court, in chancery sitting.

The petition of James Darley, now an inhabitant of East Florida, respecfully sheweth:

That on the tenth day of November, in the year eighteen hundred and seventeen, the said James Darley, then a Spanish subject, placed before Don Jose Coppinger, the acting governor of the province of East Florida, (by virtue of authority derived from the Spanish government,) his petition, containing proposals for the establishment of a saw mill to supply lumber to the use (both domestic and commercial) of the province, and praying a grant of land, of six miles square, at a place called Dunn's lake, of St. John's river, in absolute property, for the purpose aforesaid.

Your petitioner further sheweth, that in consideration of the proposition of your petitioner, the aforesaid governor Coppinger did, on the tenth day of November, in the year eighteen hundred and seventeen, order, decree, and grant to your petitioner the lands in his aforesaid petition asked for, which your petitioner avers amounts to the number of twenty-three thousand and forty acres, without condition, and in absolute property.

Wherefore, he says he is advised and alleges he hath a good and absolute inchoate right in fee simple to the lands in said petition asked for.

Your petitioner further showeth, that the lands aforesaid have been surveyed, and lie and are situated within the jurisdiction of this court.

Your petitioner further states, that his aforesaid claim has been filed before the board of commissioners, appointed to ascertain claims and titles to lands in East Florida, who, as he is informed and believes, have refused to recommend the same to the favorable notice of the United States Government, and have rejected the same, but have not reported the same as forged or antedated; nor is the same annulled by the treaty with Spain, nor by the decree ratifying the same; a copy of all which proceedings will be filed herewith, and prayed to be made a part of this petition, as exhibit No. But your petitioner is advised and believes, and alleges, and avers, that his grant aforesaid is good and valid, and invests him with an inchoate right to a fee simple estate in the lands in the grant granted; and that, by the usages, customs, laws and ordinances, of the King of Spain, he is entitled to a fee simple estate as aforesaid;

and by the treaty between Spain and the United States, on the 22d of February, 1819, the United States are bound to recognise and confirm to him his aforesaid title, in as full and ample a manner as he had and held the same, or could or *ought to*, have held the same, under the Spanish government, if that government were now exercising sovereign jurisdiction over this territory. Without this, the United States, as far as he knows, are the rightful claimants to said lands; your petitioner, in consideration of the premises, prays that this honorable court will take jurisdiction of this his petition, and that a copy hereof, and a citation to shew cause, &c., &c., may be served on Tho's Douglas, esq., United States district attorney for this district, pursuant to the provisions of the statute in such case made and provided; and finally, that your honor will decree to your petitioner a confirmation of his title to the lands in this his petition claimed, and such other and further relief as in equity, &c.; and your petitioner, as in duty, &c.

JOS. B. LANCASTER,
Attorney for James Darley.

Citation and return.

And afterwards, to wit, on the 24th day of August, in the year of our Lord one thousand eight hundred and twenty-nine, a copy of the foregoing petition, and a citation thereupon, was duly issued from the office of the clerk of said court, and delivered to the marshal of the said district, and was duly returned to the office of the said clerk, by the said marshal, on the fourteenth day of September, in the same year, with his return thereon made, in the words and figures following, to wit:

Marshal's return.

The within served by copy, September 5th, 1829.

WM. G. DAVIS, *Deputy marshal.*

Answer of attorney of the United States.

And afterwards, to wit, on the twelfth day of September, in the year of our Lord one thousand eight hundred and twenty-nine, Thomas Douglass, esquire, attorney of the United States for the district of east Florida, brought and filed in the clerk's office aforesaid, his answer to the petition of the said James Darley, in the words and figures following, to wit:

Superior court, November term, in the year 1829.

THE UNITED STATES OF AMERICA, ads. JAMES DARLEY.

The answer of Thomas Douglass, United States attorney for the district of East Florida, to the petition or bill of complaint of James Darley, the said attorney, in the name and for, and in behalf of, the same United States, saving and reserving to them, now and at all times hereafter, all and all manner of benefit of exception to the manifold errors, defects and irregularities, in the said petition or bill of complaint contained, for answer

thereunto, or unto so much thereof as it is material and necessary for them to answer unto, he answers and says: That he has no knowledge that any such tract of land was ever granted by Governor Coppinger to the said James Darley, as that mentioned and described by the aforesaid James Darley, in his said petition or bill of complaint, as he has therein alleged and set forth, and cannot therefore either admit or deny the same; but this respondent respectfully prays this honorable court, that the said James Darley may be required, upon the hearing of this cause, to make due proof of the making and execution of the said supposed grant by the aforesaid Governor Coppinger, if any such grant was ever made by him, and of all the matters and things in the said petition or bill of complaint alleged and set forth, as they are therein stated, according to law, and the usages of courts of equity; and this respondent avers, that if any such grant of the said tract of land was made by the aforesaid Governor Coppinger to the said James Darley, as he, the said James Darley, has in his petition or bill of complaint aforesaid set forth, alleged, and described, it was made contrary to, and in violation of the laws, ordinances, and royal regulations of the government of Spain, which were in force in the province of East Florida at the time when the said supposed grant is alleged to have been made, providing for the granting of lands in its provinces, of which said provinces the said East Florida was then one, and without the due formalities prescribed thereby, and without any power or authority on the part of the said Governor Coppinger to make it, and that it was and is entirely null and void; and this respondent expressly denies, that at the time when the said supposed grant is alleged to have been made as aforesaid, any power had been conferred upon the said Governor Coppinger by the said government of Spain to make grants of lands in East Florida of the magnitude and description of the one now claimed and described by the said James Darley in this suit; nor is it pretended or alleged by the said James Darley in his petition or bill of complaint aforesaid, that the said Governor Coppinger had been invested with any such power at the time when the said supposed grant is alledged to have been made as aforesaid, or that he possessed any power or authority to make the same; and this respondent further prays, that the said James Darley may be required to shew and prove, on the hearing of this cause, the specific powers which had been conferred, (if any powers had been conferred by the said government of Spain at the time when the said supposed grant is alleged to have been made,) upon the said Governor Coppinger to make grants of land in East Florida; and particularly that the said James Darley may be required to shew and prove, on the hearing of this cause as aforesaid, the specific powers under which the said Governor claimed to act in making the said supposed grant, if indeed any such grant was ever made by him; and this respondent suggests, that if the said James Darley has any such grant for the said tract of land, it was made since the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and eighteen, and that it is consequently rendered entirely null and void, by the provisions contained in the latter clause of the eighth article, between Spain and

the United States, of the 22d of February, 1819, which is in the same petition or bill of complaint mentioned; and that, therefore, this honorable court cannot take cognizance of the claim of the said James Darley to the said tract of land, or exercise any jurisdiction in this case against the said United States; and this respondent further saith, that at the time when the said supposed grant is alleged to have been made as aforesaid, it was, and for a long space of time had been, the fixed and settled policy of the said government of Spain to parcel its colonial domain, in reference to the sole object of increasing the population of its provinces, and of benefitting its indigent inhabitants; and that, according to that policy, grants of land for the purposes of speculation were never approved or tolerated by the said government of Spain, and that the aforesaid supposed grant of the said tract of land was obtained by the said James Darley, if it was obtained by him at all, for purposes of speculation only, and that it was never approved by the said government; and this respondent further saith, that if the said Governor Coppinger made the said supposed grant, as the said James Darley has in his said petition or bill of complaint aforesaid alleged, which is by no means admitted, he made the same in consideration that the said James Darley had before that time proposed to the said Governor Coppinger that he, the said James Darley, would build and establish on the said tract of land a water saw mill, and in consideration that the said James Darley had agreed, to and with the said Governor Coppinger, that the said James Darley would build and establish said mill to supply timber to the use, both commercial and domestic, of the said province, and that the said James Darley took and accepted the said supposed grant upon the express condition of building and establishing upon the said tract of land a saw mill as aforesaid, for the purposes above mentioned; yet this respondent avers, that the said James Darley has not built or established the said saw mill, but has always hitherto entirely failed and neglected so to do, and that he has by the said total failure and neglect, and by his total failure and neglect to occupy, cultivate, or improve the said tract of land, for a period of more than eleven years last past, wholly forfeited and lost all right and title, if any he ever had, to the said tract of land; and this respondent further saith, that if the said supposed grant of the said tract of land had been made, as is in the said petition or bill of complaint alleged, and if the condition thereof had been in every respect fully complied with and fulfilled, it would have given to the said James Darley no right or title to the soil of said land whatever, nor any other right thereto, except to cut the pine trees upon the said tract of land for the use of the said mill; and this respondent admits, that the said James Darley filed his claim before the board of commissioners in his said petition or bill of complaint mentioned, as he has therein stated, and avers that the said board of commissioners rejected the same, as will more fully appear by reference to its report thereon, a copy of which is hereunto annexed, and made a part of this answer as exhibit (A), and is taken from the 88th page of a report of the Secretary of the Treasury, made to the Senate of the United States on the eighteenth day of Janu-

ary, in the year of our Lord one thousand eight hundred and thirty, transmitting a final report on private land claims in East Florida. And this respondent denies, that the said supposed grant is good and valid, or that it invests the said James Darley with the inchoate right to a fee simple estate in the said tract of land whatever, or that by the usages, laws, and ordinances of the King of Spain, he is entitled to a fee simple estate, or any other estate therein; that, on the contrary, the said supposed grant, if made at all, was made contrary to, and in violation of, the said usages, laws, ordinances, and royal regulations of the said government of Spain as aforesaid, as will more fully and at large appear by reference to the said laws, ordinances, and royal regulations, all of which this respondent prays leave to introduce, and read on the hearing of this cause; and this respondent also denies, that the said United States are bound by the aforesaid treaty, or in any other manner, to recognise or to confirm the said claim of the aforesaid James Darley to the said tract of land, or to any part or parcel thereof, in any way or manner whatever; and this respondent further saith, that the said James Darley was a foreigner, and not a subject of the said King of Spain at the time when the said supposed grant is alleged to have been made to him, and that, therefore, the said tract of land could not lawfully have been granted to him by the said Governor Coppinger; and further, that it was contrary to, and against, the well known and well settled policy of the said government of Spain to grant lands to foreigners at the time when the said supposed grant is alleged to have been made, unless the said foreigner took the oath of allegiance to his Catholic Majesty; and that the said James Darley having been, as appears by his own shewing, a subject of the government of Great Britain at the time last above mentioned, the said supposed grant was therefore null and void, and of no force or effect whatever.

And now, having fully answered all the matters and things in the said petition or bill of complaint alleged and set forth, the said attorney prays that the said United States may be hereof discharged, and *and* that their reasonable costs and charges by them in and about the defence of this suit paid, laid out, and expended, may be adjudged and decreed to them, &c.

THOS. DOUGLAS,
United States Attorney.

No. 1—*Exhibit A.*

"James Darley, claimant—23,000 acres of land on Dunn's lake.

An application for six miles square on Dunn's lake, in absolute property, to establish a saw mill. The decree is dated on the 10th November, 1817, and makes the grant in *absolute property.* We have already said, that there is no permission to erect a mill over which a deep suspicion does not rest, which passes the title to the soil, and does not prescribe that the grant is void unless the mill is erected. This grant conveys more land than any other of the kind. It is for six miles square, and G. Clarke certifies that he surveyed to the claimant in December,

1817, 23,000 acres of land. We do not believe that this grant is valid; it is Aguilar's certificate of title, and nothing more. It is rejected.

Claimant's death suggested.

And afterwards, to wit, on the 23d day of July, in the year of our Lord one thousand eight hundred and forty-four, unto which day the said cause had been regularly continued, being a day of July term of this year aforesaid, the following entry of record was made in the said cause to wit:

Land claim 23,040 acres.

JAMES DARLEY,
vs.
THE UNITED STATES OF AMERICA.

This day came as well the counsel for the said claimant, as the counsel for the United States, and the counsel for the said claimant gives the court to understand, and be informed, that since the commencement of this suit, the said James Darley hath departed this life, and that Charles Lawton has duly qualified as executor of the said James Darley; he therefore prays, that this cause may proceed in the name of the said Charles Lawton, as executor of the said James Darley, against the said United States, which is ordered accordingly.

Bill of Revivor.

And afterwards, to wit, on the 29th day of the same month of July, in the year of our Lord one thousand eight hundred and thirty-four, the afore named Charles Lawton, executor of the said James Darley, deceased, by Joseph B. Lancaster, esq., his solicitor, brought and filed in the clerk's office aforesaid his bill of revivor in said cause, which said bill of revivor is in the words and figures following, to wit:

Superior court, eastern district of Florida.

To the honorable Robert R. Reid, judge of the superior court for the eastern district of Florida aforesaid, and specially authorised by an act of Congress to receive and adjudicate claims to lands within the aforesaid district.

The petition of Charles Lawton, executor of the last will and testament of James Darley, deceased, for and on behalf of himself and the unknown heirs and devisees of said decedent, respectfully sheweth unto your honor, that said James Darley, in his lifetime, on the twenty-second day or May, in the year of our Lord eighteen hundred and twenty-nine, and within the time limited by act of Congress, in such case made and provided, did file his petition against the United States, in said court, setting forth his claim to a certain tract of land, containing twenty-three thousand and forty acres, within said eastern district of Florida, and within the jurisdiction of this honorable court, as by reference to said petition and exhibits therein mentioned will fully appear. Your petitioner further sheweth, that upon the said petition of the said James Darley, process from this court was duly issued, and served upon Thomas Douglas, esq.,

attorney for the United States for the district of East Florida, and that the answer of said Douglas, for and on behalf of the United States, to the said petition, was duly filed.

Your petitioner further sheweth, that since the filing said petition and the answer thereto, the said James Darley has departed this life, leaving your petitioner, and the unknown heirs and devisees aforesaid, his only legal representatives; and your petitioner further sheweth, that said suit and proceedings having become abated by the death of the said James Darley, your petitioner, and said unknown heirs and devisees, have become entitled to have the said suit and proceedings revived against the said United States, and to have the same put in the like state and condition as it was in previous to the death of the said James Darley, and also to be permitted to carry on and prosecute the said suit to a final determination.

To this end, therefore, your petitioner, for and on behalf of himself, and the unknown heirs and devisees of, &c., aforesaid, prays that process in this behalf do forthwith issue against the said Thomas Douglas, esq., attorney for the United States, in pursuance of the statute in such case made and provided; and your petitioner will ever pray, &c.

J. B. LANCASTER,
Attorney for petitioner.

Service of scire facias and copy of bill.

And afterwards, to wit, on the same 29th day of July, in the year of our Lord one thousand eight hundred and thirty-four, a writ of scire facias, with a copy of said bill of revivor thereunto attached, was duly issued from the clerk's office aforesaid, and delivered to the marshal of the said district of East Florida, and the same was duly returned to the clerk's office aforesaid, on the seventh day of August, in the aforesaid year one thousand eight hundred and thirty-four, with the return of the said marshal thereon endorsed, in the words and figures following, to wit:

Marshal's return.

Executed by delivering a copy to Thomas Douglas, esq., United States attorney.

August 4th, 1834.

SAMUEL BLAIR, *Marshal.*

Order for leave to amend petition.

And afterwards, to wit, on the fourth day of August, in the year of our Lord one thousand eight hundred and thirty-four, being a day of the term of July, at the court house aforesaid, before the court aforesaid, the following entry of record was made in said cause, to wit:

JAMES DARLEY,
vs.
THE UNITED STATES OF AMERICA. } 23,040 acres.

On motion of the counsel for the claimant in the above entitled cause, it is ordered, that they have leave to amend the petition filed in said cause.

Answer of United States attorney to the bill of revivor.

And afterwards, to wit, on the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and thirty-four, came Thomas Douglas, esq., attorney for the United States as aforesaid, and brought and filed in the clerk's office aforesaid, his answer to the said bill of revivor of the said Charles Lawton, executor of the said James Darley, deceased, which said answer is in the words and figures following, to wit:

District East Florida, Superior court.

THE UNITED STATES, ads. CHARLES LAWTON, ex'er, et al. } *Bill of revivor.*

The answer of Thomas Douglass, United States attorney, for the district of East Florida, to the bill of revivor of Charles Lawton, who claims as executor of the last will and testament of James Darley, deceased.

The said attorney, for and on behalf of the same United States, to the said bill of revivor, answering, admits, that the said James Darley did file his petition against the said United States in the court aforesaid, setting forth his claim to a certain tract of land, containing twenty-three thousand and forty acres, and that upon said petition of said James Darley, process from said court was duly issued and served upon this respondent, and that the answer of this respondent, for and on behalf of the same United States, to the said petition, was duly filed, as in said bill of revivor is alledged.

This respondent further admits, that since the filing of said petition, and the answer thereto, the said James Darley has departed this life, and this respondent has understood left a will, in which the said Charles Lawton is named as executor; but what heirs or devisees he left, or whether he left any or not, this respondent does not know; but this respondent avers and insists, that if the said James Darley left any legal heirs or representatives, they should have been made parties to this proceeding; and this respondent avers and insists, that it is not competent for the said Charles Lawton, as executor as aforesaid, to revive this suit, or to make himself a complainant therein, nor has the said Charles Lawton become entitled to have the said suit revived, nor can it, agreeably to any rules or usages of courts of equity, be revived in behalf of the unknown heirs of the said James Darley, if any such there be.

And this respondent saith, that he is not aware that the said James Darley left any heirs or legal representatives, and insists that if he did not, all his real estate has escheated to, and become the property of, the same United States.

And this respondent further answering, saith, that he insists, on behalf of the same United States, on all such right and interest in the premises, in the said bill of revivor mentioned, as the said United States shall appear to have therein; and this respondent humbly submits the same to the judgment, order, and direction of this honorable court; and also humbly prays

that this honorable court will take care of the right and interest of the said United States in the premises; without that, &c., &c.

THO. DOUGLAS,
United States Attorney, &c.

Death of the said Charles Lawton, executor of the said James Darley, deceased, suggested.

And afterwards, to wit, on the sixth day of July, in the year of our Lord one thousand eight hundred and forty, unto which day the said cause had been brought by regular continuance before the judge of the said superior court, at the court house, in the city of St. Augustine, at chambers, the following entry of record was made in said cause, in the words and figures following, to wit:

Superior court, East Florida. In chancery, at Chambers, July 6, 1840.

JAMES DARLEY, vs. THE UNITED STATES. } Land claim, 23,040 acres.

This day comes Thomas Douglas, esquire, attorney of the United States for the district of East Florida, and gives the court to understand, and be informed, that since the commencement of this cause, the said James Darley hath departed this life, whereby the said suit and proceedings have abated; and that Maria, Mary, Eliza and Sarah Darley are the legal representatives of the said James Darley, deceased. Whereupon, on motion of the said district attorney, it is ordered that the said above named representatives of the said James Darley, deceased, do show cause before the superior court for the Eastern District of Florida, at the court house, in the city of St. Augustine, on Monday the 13th day of July instant, why they should not be made parties complainants in the above entitled cause, or why the same should not be dismissed for want of parties, and failure to prosecute the same; and it is further ordered, that a copy of this rule be served on the complainant's solicitor, and also on the representatives above named, without delay.

Service of copy of rule.

And afterwards, to wit, on the same sixth day of July, in the year of our Lord one thousand eight hundred and forty aforesaid, a copy of said rule was duly issued from the clerk's office aforesaid, and delivered to the marshal of the said district of East Florida, and the same was duly returned to the clerk's office aforesaid, by the said marshal, on the 11th day of July, 1840, with his return thereon, made in the words and figures following, to wit:

Marshal's return.

Executed by delivering a copy of this rule to E. B Gould, one of the counsel for the complainants, 11th July, 1840.

JOS. SANCHEZ, *Marshal.*

Affidavit of E. B. Gould.

And afterwards, to wit, on the seventeenth day of July, in the year eighteen hundred and forty aforesaid, Elias B. Gould, counsel for the said claimants, came and filed in the clerk's office aforesaid an affidavit in the said cause, which said affidavit is in the words and figures following, to wit:

In the superior court for the district of East Florida, for the trial of land claims.

CHARLES LAWTON, ex'or of JAMES DARLEY, deceased, vs. THE UNITED STATES. } Claim for 23,040 acres.

Elias B. Gould, one of the counsel for the claimants, being duly sworn, says, that since the commencement of this cause James Darley, the grantee and original claimant, hath departed this life. That he, the said Darley, left a will in which he nominated Charles Lawton, Joseph Lawton, Thomas H. Dummet and Jonathan Pollard, executors thereof. That Charles Lawton duly qualified under said will, and took upon himself the administration of the estate, and the others declined; that since then the said Charles Lawton hath departed this life, and so have Jonathan Pollard and Thomas H. Dummet; Joseph Lawton is still living, but hath not qualified himself as executor of said estate, neither hath administration been granted to any person, as far as deponent knows or believes.

And deponent further says, that some time since, the precise time he does not recollect, but it was some time after the death of the qualified executor of the said Darley, James Ormond made application to the judge of the county court of St. John's county, for administration on the unadministered estate, but that the said judge declined to grant administration for want of jurisdiction, the place of residence of the testator, at the time of his death, being in Mosquito county, and it not appearing that he died leaving assets in any other county of this territory, as far as this deponent is advised or believes; nor does it appear that any other jurisdiction within any other county, could legally have granted jurisdiction.

And deponent further says, that the said testator by his said will made a certain negro woman, called Maria, and her three children, Mary, Eliza, and Sarah, legatees, giving to them and for their use certain negro slaves, requiring said slaves to be kept on the plantation, and making provision for the support of the said Maria and her children, until they should respectively arrive at the age of twenty years, at which time they should receive a proportionate share of said slaves, or an equivalent thereto; and in addition, the said Maria was to have a house built on the plantation of the testator, in which she was to reside, as long as she chose to do so, free and clear of charges therefor.

And deponent further says, that in and by said will, it is further provided, that when the youngest child of the said Maria, shall have arrived at the age of twenty years, the rest and residue of the testator's estate, real

and personal, shall go to his sister, Mrs. Jonathan Pollard, of England, and her four children, whose names are not stated; and it nowhere appears, that the said Maria and her three children hath any further or other interest in the real estate, than a certain periodical share of the agricultural products thereof, and for a definite period; and if they had, deponent submits whether a proper respect for our laws and institutions, would render it politic and proper *to make* negroes and molattoes should be made parties in suits in which white persons are the heirs.

And deponent further says, that on inspecting the accounts of the said Charles Lawton, as executor of the aforesaid estate as filed, there appears to be a balance, due to him from the estate, a large sum of money, to wit, the sum of $4,267 57.

And deponent further says, that in the year 1835, all the plantations and settlements in the aforesaid county of Mosquito were broken up by the Indians, and the inhabitants made subject to their power, and driven from the said county; that from that time no jurisdiction has existed that could take jurisdiction in relation to the estate of James Darley, deceased.

And deponent further says, that under the circumstances herein set forth he apprehends that great injustice will accrue to the parties in interest in this case, if he is compelled to make the said Maria Darley, Mary, Eliza, and Sarah Darley, parties, and he therefore asks a continuance thereof.

E. B. GOULD.

Sworn to me in open court, 17th July, 1840.

K. B. GIBBS, *Clerk.*

Order for bill of revivor to be filed.

And afterwards, to wit, on the twentieth day of July, in the year of our Lord one thousand eight hundred and forty, unto which day the said cause had been regularly continued, being a day of July term of said year, the following entry of record was made in said cause, to wit:

CHARLES LAWTON, executor of JAMES DARLEY, deceased
against
THE UNITED STATES OF AMERICA.

Land claim—23,040 acres.

This day came the parties in the above named cause, by their solicitors, and the death of the said Charles Lawton having been suggested to the court, and a rule having been issued by this court, under date of the 6th inst., requiring that the heirs and legal representatives of the said James Darley, deceased, should appear, and be made parties complainant in this cause; and no bill of revivor having been filed in this cause, or any other step taken to revive the same, and the counsel for the said claimants, suggesting to the court, that the heirs of the said James Darley are not residents of this Territory, and reside in the kingdom of Great Britain. It is therefore ordered, that a bill of revivor, on behalf of

the heirs of the said James Darley, deceased, be filed in this cause within five months from the day of the date hereof; on failure whereof, leave is given the attorney for the United States, to apply to the court for an order of publication, requiring the said heirs to appear and be made parties complainants in this cause, or that the same will be dismissed for failure to prosecute; which said order shall be published once a week, for six months, in the government paper at Washington city, and in one of the newspapers of this territory; whereupon this cause is continued till the next term.

Order for publication of notice to appear.

And afterwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and forty-one, unto which day the said cause had been regularly continued, before the judge of said court, at chambers, the following entry of record was duly made in said cause, in the words and figures following, to wit:

District of East Elorida, St. John's county, in Superior court.

CHARLES LAWTON, executor of JAMES DARLEY, deceased
vs.
THE UNITED STATES OF AMERICA. } Land claim.

Whereas the heirs of James Darley, deceased, have not filed any bill of revivor in this cause, in pursuance of the order of this court, made on the twentieth day of July last; and whereas, more than five months have elapsed since the date of the said order; therefore, on motion of the district attorney of the United States, it is ordered, that the said heirs appear and cause themselves to be made parties in his cause, by bill of revivor, or otherwise, on or before the second Monday of July next, or that the bill will be dismissed, or a decree against them granted; provided, that, in the mean time, a copy of this order shall be published once a week for six months successively, as directed by the said order, made on the twentieth day of July last.

Bill of revivor filed.

And afterwards, to wit, on the sixteenth day of June, in the year of our Lord one thousand eight hundred and forty-one, Elias B. Gould, counsel for the said claimants, brought and filed in the clerk's office aforesaid their bill of revivor, in the words and figures following, to wit:

To the hon. Isaac H. Bronson, judge of the superior court for the district of East Florida, and especially authorized by law to adjudicate claims to lands within said district.

The petition of Joseph Lawton, who is executor of the estate of Charles Lawton, deceased, who was one of the executors of the last will and testament of James Darley, late of Mosquito county, in said district, deceased, and whose estate is principal creditor of the said estate of James Darley, deceased; Martha Pollard, who is the widow of Jonathan Pollard, late of England, deceased; and Jamas Kershaw, and Hannah Maria Pollard, his wife, Robert Mutrie, and Sarah Pollard, his wife; William

Pollard and James Pollard, all of England aforesaid, who are children of the said Martha Pollard, and heirs and legatees of the estate of the said James Darley, deceased, respectfully sheweth:

That the said James Darley, now deceased, did, in his lifetime, to wit, on the 22d day of May 1829, and within the time limited by law, in such cases made and provided, for filing claims to lands in said superior court, duly file his petition in said court, therein setting forth his claim to a certain tract of land, containing twenty-three thousand and forty acres, within the said district, and within the jurisdiction of this court, and described as being at a place called Dunn's Lake, upon the St. John's, as will more fully appear by reference to a survey thereof, made by the Spanish surveyor general on the 21st December, 1817.

And your petitioners further show, that the said claim was duly submitted to the examination of the board of commissioners, appointed under, and by virtue of, an act of Congress, entitled "an act for ascertaining claims and titles to lands in the territory of Florida, and to provide for the survey and disposal of the said public lands in Florida, passed third day of May, 1823. That the said claim was embraced by the treaty between Spain and the United States, of the 22d of February, 1819, and that had it not been decided, nor finally acted upon under the provisions of the act of Congress, entitled "an act supplementary to the several acts, providing for the settlement and confirmation of private land claims in Florida," passed 23d day of May, 1828, or of any of the acts of Congress to which said act is supplementary, that said claim had not been reported by said commissioners, appointed under any of the aforesaid acts of Congress, in such case made and provided, as antedated or forged, and had not been annulled by the treaty aforesaid, nor the decree ratifying the same.

And your petitioners further shew, that upon the petition of the said James Darley, process from this court was duly issued and served upon Thomas Douglas, esquire, attorney for the United States, for the district of East Florida, and that the answer of the said United States to the said petition was duly filed.

And your petitioners further show, that since the filing of said petition and answer, the said James Darley hath departed this life, leaving heirs and legal representatives of his estate, and also creditors thereof, to a large amount; and that said suit, and the proceedings herein, having become abated by the death of the said James Darley, your petitioners, as creditor heirs at law, legatees and legal representatives of said estate, are entitled to have the said suit revived against the said United States, and prosecuted and carried on, and to have the cause put in the same condition as it was previous to the death of the said James Darley.

To the end, therefore, that the said suit and proceedings, which became so abated as aforesaid, may stand revived, and be in the same state and condition as the same were in at the death of the said James Darley, or that said defendant may show good and sufficient cause to the contrary, your petitioners pray, that process in this behalf do further issue against Thomas Douglas, esq., attorney, as aforesaid, of the said United States,

in pursuance of the act of Congress in such case made and provided; and your petitioners will ever pray, &c.

E. B. GOULD,
Atty. for claimants.

Answer to bill of revivor.

And afterwards, to wit, on the tenth day of July, in the year of our Lord one thousand eight hundred and forty-one, Thomas Douglas, esq., attorney for the United States, as aforesaid, brought and filed in the clerk's office aforesaid, his answer to the bill of revivor of the said claimants, which is in the words and figures following, to wit:

District of East Florida, superior court, in chancery.

The answer of Thomas Douglas, United States attorney for the district aforesaid, to the bill of revivor of Joseph Lawton, executor, &c., of Charles Lawton, deceased, Martha Pollard, widow of Jonathan Pollard, late of England, deceased, Hannah Maria Kershaw, late Hannah Maria Pollard, and James Kershaw, her husband, Sarah Mutrie, late Sarah Pollard, and Robert Mutrie. her husband, William Pollard and James Pollard, all of England, children of said Jonathan Pollard, deceased, and as legatees of the estate of James Darley, deceased, as this respondent has been lately informed and believes.

The said attorney, for and on behalf of the same United States, saving, reserving, &c. For answer to the said bill of revivor, or to so much thereof as it is material and necessary for them to answer unto, answereth and saith, that true it is that the said James Darley, in his lifetime, did file his petition in this court for the tract of land in the said bill mentioned as therein stated, and that he afterwards departed this life, and that said suit consequently abated; but as to the other matters and things in said bill of revivor mentioned, except so far as they were alledged in the petition of the said James Darley, now deceased, and were answered unto in the answer of this respondent to said petition, this respondent is a stranger, and prays this honorable court to take care of and protect all such rights and interests, as the said United States shall appear to have in the premises; without that, &c.

THO. DOUGLAS,
U. S. Atty.

Hearing of cause.

And afterwards, to wit, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and forty-one, being a day of July term in the said year, to which day the said cause had come by regular continuance, the following entry of record was made in said cause, to wit:

HEIRS OF JAMES DARLEY,
vs.
THE UNITED STATES.
} Land claim, 23,040 acres.

And now, at this day come the said claimants by Elias B. Gould, esq., their attorney, and also come the said United States, by Thomas Douglas, esq.,

their attorney, and thereupon the counsel for the said claimants moved the court for leave to amend their petition, by striking out the word "never," from the 9th line of the second page, which was ordered accordingly; and thereupon, the hearing of this cause was brought on, and the petition of the said claimants and the answer of the United States were read, and submitted to the court, as well also as the bills of revivor and answer thereunto. The counsel for the said claimants then offered in evidence the petition of James Darley to Governor Coppinger, dated the seventeenth day of November, one thousand eight hundred and seventeen, and the decree of said Governor Coppinger thereon, and certificate of Thomas d'Aguila thereto certified, from the office of the keeper of public archives, and a certified translation thereof by the translator and interpreter of this court. The claimants' counsel then offered in evidence the certificate and plat of survey, made by Geo. J. F. Clarke, of the premises claimed in this case, dated twenty-first day of December, 1817, for twenty-three thousand and four acres, on the west part of Dunn's Lake, which is admitted to be in the handwriting of G. J. F. Clarke. The claimants' counsel also offered in evidence a certified copy of the will of the said James Darley, which was received and filed, as also letters testamentary to Joseph Lawton, as executor of Charles Lawton, which was received and placed on file. The counsel for the claimants then called Antonio Alvarez, keeper of public archives, as a witness on their behalf, and his evidence was taken and reduced to writing; and thereupon, after hearing argument of the said cause, as well upon the part of the said claimants as on the part of the said United States, the same was submitted to the court for its decree thereon.

Opinion of the Court.

And afterwards, to wit, on the thirteenth day of September, in the year of our Lord one thousand eight hundred and forty-one, being a day of the term of September, in the year aforesaid, the opinion of the court was delivered on said claim, so submitted on the seventeenth day of July of the same year, in the words and figures following, to wit:

District of East Florida.

In superior court, in equity. Land claim for 23,040 acres. Submitted at July term, 1841.

HEIRS OF JAMES DARLEY,
vs.
THE UNITED STATES.

In this case the claimants seek the confirmation of a land grant, alledged to have been made by Governor Coppinger, on the tenth day of November, in the year eighteen hundred and seventeen, for six miles square, or twenty three thousand and forty acres. The proofs show that on the tenth day of November, one thousand eight hundred and seventeen, James Darley presented his petition to the governor, in which, after stating his intention of settling in the province, and knowing the great advantage that would result to the province from the article of lumber,

if machinery for sawing is erected, and wishing to dedicate his attention and funds to that object, "he solicits the governor to grant him, in *absolute property*, six miles in a square of land, at the place called *Dunn's Lake, upon the river St. John's*, for the purpose aforesaid of establishing said machinery."

On the same day, the governor, taking into consideration the benefit and utility which ought to result to the improvement of the province by what the petitioner proposes, "grants" to him, in *absolute property*, "the six miles in a square of land, which he solicits for said water saw mill."

It cannot be overlooked in examining these proceedings thus far, that the evident intention of the Spanish governor was, that a saw mill should be erected on these lands thus granted, and that that was the sole and only consideration of the grant; and it is singular that the governor did not, as in all other cases of mill grants, make the building of a mill a condition precedent to giving an absolute title, for I believe there is no other case of a mill grant by the governor of East Florida, where the absolute title was not made to depend upon the building of a mill, unless *other* consideration entered into the grant; but it seems, that for some reason best known to himself, Governor Coppinger departed from the usual form, and dispensed with the usual conditions insisted on in such grants, and gave the land in *absolute property* to the petitioner, trusting to his good faith to build the mill, which the governor himself sets forth as the sole consideration of making the grant. If, therefore, the governor was willing to take that matter upon trust, and make the grant absolute, and without condition, as it seems he did do, it is not for this court to say, that the grant is void, because the consideration for which it was made was not in fact rendered.

Without recapitulating the other proofs in the cause, it is sufficient for the present to say, that the claimants have made out a case, which entitles them to a confirmation of the title of the land granted, *provided*, the identity of the land specified in the grant is such as to warrant a decree of confirmation; or, in other words, if the description of the land, as contained in the grant, is such that the land intended can be identified, located, and laid down by actual survey, according to the calls and manifest intention of the grant.

The claimants have put in evidence a survey of a tract of land, made by George J. F. Clarke, (formerly the Spanish surveyor general of East Florida,) bearing date the twenty-first day of December, 1817, and which, with the plat accompanying it, purports to be a survey and plat of the land in question. But there are objections to this survey of such a nature as to make it improper that an absolute decree should be made for the land therein described.

First, it does not follow the calls of the grant, even if they can be followed at all; the grant is for the place called Dunn's Lake, "on the river St. John's." There is as yet no proof that there is such a place "*on the river St. John's*," but taking it for granted that there is such a place, which may be found, this survey does not appear to be at that place; it is not "*on the river St John's*" at all.

The location, it is true, appears to be on the west side of Dunn's Lake, and "contiguous to the waters thereof in its upper part." In the absence of any proof, as to the geography of the country, if it should be said that the court should take notice of the maps of the surveyed part of the territory, as published from the land office, it will be remarked that the maps of the country show that a lake, called Dunn's Lake, does connect itself with the St. John's; but it will also appear that a square of six miles, bounded on the east by the upper end of the lake, will not extend to the river St. John's; and if it was the intention of the grant that the lands should lie "upon the river St. John's," such a location as is set forth in the plat and survey must of course be rejected.

Whether the point of junction between the lake and the river is "*the place*" alluded to in the grant, it is not necessary now to determine, (nor in fact can that point be determined without further proof,) but if it is there, clearly the survey offered is not a survey or plat of the land granted.

Secondly. The survey and plat are materially defective in other particulars. There is no well defined corner, or permanent monument, mark, or boundary, which is known and established, or which can be found as a starting point. The plat shows that the first corner is a stake in the swamp, near the margin of the lake, but whereabouts in the swamp, or how far from the head or the foot of the lake, does not appear; and all the other corners are represented to be stakes, but without marks, and their location entirely undefined; and the survey does not purport, that the lines were ever run or marked; and even if it was conceded that *stakes* were set at the four corners of a tract six miles square, in that part of the country in 1817, it could hardly be supposed that at this time they would furnish any aid to the person who should attempt to find the tract; but the court cannot disregard the suggestion which has been repeatedly made in these land cases, with reference to Clarke's surveys, viz, that they were not made in fact upon the land, but merely delineated on paper, particularly where that suggestion is strengthened by the internal evidence afforded by the survey itself. This plat and survey bill might easily have been made by Mr. Clarke without his ever seeing the land, and in the absence of any proof to show that any one corner, line, or mark, or boundary of this tract, is now extant, or can be found, it would be very improper to confirm this survey.

It must not be overlooked in the decision of these land cases, that although the equity and justice of the claim, or the validity of the grant alleged, is of primary importance, and the first thing to be ascertained, *yet* the exact location and boundaries of the tract in question are equally important, not only to the United States, but to the claimant; and it was one of the principal objects that the government had in view, in confiding the adjustment of these claims to this court, by the act of 1828 and 1830, that the extent, location, and boundaries of such grants as were found to be valid, might be clearly ascertained, and fully and finally adjusted between the claimants and the government, so that the grants found to be valid might, with precision and accuracy, be severed from

the remainder of the public domain, and that the proper officers of the government might know what lands belonged to the United States, and what might and could safely be sold by them.

This was all important to the correct operations of the land office, and of deep concern to the claimants, and by the act of Congress the decree of this court is made final and conclusive upon the parties, unless appealed from. To make a decree, therefore, which merely settles the right of the claimant to a certain quantity of land in a certain neighborhood, or section of the country, without clearly defining the locality, extent, and boundaries of such land, by proper and known or permanent land marks and monuments, would seem to be a very incomplete fulfilment of the provisions of the statute, and to fall far short of the objects of the law. The surveys of these grants should be accurate and defined by permanent corners, and the intersection of the lines of the tract with the lines of the government surveys should be clearly and accurately shown; or where this is not entirely practicable, some one or more of the corners of the tract or grant should be clearly defined by a permanent land mark or monument, and its course and distance from some corner of the public surveys accurately given, so that the lines of the tract may be seen therefrom without any difficulty.

In this case, it may be that the survey was actually made, and that further proofs may show, that the lines and corners are now to be found, and that it is clearly within the calls of the grant; but if, on the other hand, it should appear that no survey was made, or that no corners or boundaries can be found, or being found that they are not within the calls of the grant, then it is a proper case for a survey before final decree, and one should be made; provided, upon proofs to be made respecting the region of country in which the grant is claimed, "the place" designated in the grant can be found and identified; but if, on the contrary, it should appear that the place mentioned in the grant cannot be found, and that the description is too indefinite for a survey to be made, that the description lacks identity, or ascertainable locality, then of course the grant must be declared void for want of identity, and the claimants take nothing by their concession. Forbes' case, 15 Peters, 184–'5. Arredondo's case, 6 Peters, 691. Bucyk's case, 15 Peters, 223.

With a view, therefore, of enabling the claimants to produce further proofs on these points, and to identify and locate the land, claimed by actual survey, or otherwise, the decree must be suspended or postponed, and the cause continued.

J. H. BRONSON, *Judge.*

Further order of court.

And afterwards, to wit, on the same thirteenth day of September, in the year of our Lord one thousand eight hundred and forty-one, at a regular term of the said court, the following order was duly entered of record in said cause, to wit:

THE EXECUTORS OF JAMES DARLEY,
vs.
THE UNITED STATES.
} Land claim, 23,040 acres.

This cause having been argued and submitted at the late July term of this court, after having maturely considered the same, the court, in accordance with the written opinion this day filed in the cause, doth order, and it is hereby ordered, that the same be continued for further evidence, and that a survey be made of the land claimed by the petitioner in this case.

Order of survey.

And afterwards, to wit, on the thirteenth day of November, in the year of our Lord one thousand eight hundred and forty-one, being a *a* day of November term of said year, unto which day the said cause had been brought by regular continuance, the following entry of *of* record was made in said cause, to wit:

DARLEY'S EXECUTORS, vs. THE UNITED STATES. } Land claim, 23,040 acres.

This day came the parties in this cause, by their respective attornies, and the evidence of Mauricio Sanchez, Joseph S. Sanchez, and John M. Fontané, witnesses produced, sworn, and examined, on the part of the said claimants, was taken and reduced to writing; and upon motion of counsel for claimants, it is ordered that a survey be made of the lands claimed in this case, within such time, and in such manner, as may hereafter be more particularly specified by this court.

Further order of court.

And afterwards, to wit, on the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and forty-two, being a day of March term in the year aforesaid, unto which day the said cause had been brought by regular continuance, the following entry of record was made in the said cause, to wit:

DARLEY'S EXECUTORS, vs. THE UNITED STATES. } Land claim, 23,040 acres.

It appearing to the court that an order heretofore made, directing the surveyor general of the territory of Florida to survey the land claimed in this cause, has not been complied with, and that the said surveyor general disclaims the right and power lawfully to comply with said order, it is therefore ordered, that the claimants be, and they are hereby, authorized to have the said lands surveyed, and a report thereof made to this court at the next term thereof.

Further order of survey.

And afterwards, to wit, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and forty-two, being a day of October term of the said year, unto which day the said cause had been brought by regular continuance, the following entry of record was made in said cause, to wit:

DARLEY'S EXECUTORS,
vs.
THE UNITED STATES. } Land claim, 23,040 acres.

This cause coming on to be heard, and it appearing that the survey theretofore ordered in this case has not been made, a sufficient excuse having been shown on the part of the claimants for not completing the same; and it appearing to the satisfaction of the court that no final decree can properly be made in this case, until a survey of the premises claimed by the claimants shall have been made and returned to this court, or the location and boundaries of said land more fully ascertained; and on motion of claimants' counsel, and by consent of the counsel for the United States, it is ordered, that a survey of the said premises be made by, or under the direction of, the surveyor general of this territory; and in case he does not make, or cause to be made, such survey within ninety days from this date, then and in that case such survey may be made by the county surveyor of St. John's county, or some other competent surveyor, to be employed by the complainants, and approved of by the judge of this court. That in making such survey the surveyor shall have due regard to the plat or survey bill of Geo. J. F. Clarke, which has been filed and put in evidence in this case, so far as the same may be found to agree, or correspond, with the calls of the grant under which the claimants claim. That after such survey shall have been made, the same shall be returned to this court, accompanied by a map or plat of the said lands thus surveyed, and a survey bill of the same; which map, or plat and survey bill, must show the township, range, and sections on which the said lands are situated, in case they are upon surveyed government lands, and how, and where the lines of the tract, as thus surveyed, connect with, or intersect, the lines of the government surveys; and such survey bill, plat, and report shall, if possible, be made and returned at or before the next term of this court; and if made by any other person than the surveyor general, or one of his deputies, be verified by the oath of the person making the same; and in the mean time, until the coming in of such report, survey bill, and plat, further proceedings in this cause shall be suspended, and the cause continued; to the end that, on the coming in and confirmation of the surveyor's report, such further and other decree may be made in the premises as may be meet and proper; and it is further ordered, that the clerk of this court immediately furnish to the surveyor general a copy of this order, and also of the original grant, and survey bill, and plat, which have been given in evidence in this cause.

Further order of court.

And afterwards, to wit, on the twentieth day of June, in the year of our Lord one thousand eight hundred and forty-three, being a day of June term of the same year, unto which day the said cause had come by regular continuance, the following entry of record was made in said cause, to wit:

DARLEY'S EXECUTORS,
vs.
THE UNITED STATES. } Land claim, 23,040 acres.

This cause coming on to be heard this day, and it appearing that the survey ordered at the last term of this court had not yet been made, (but that the said claimants were bona fide endeavoring to have the said order complied with,) it is therefore ordered, that the said cause be continued until the next term, in order that, upon the coming in of said survey, the said cause may be finally adjudicated.

Cause submitted.

And aftewards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and forty-three, being a day of November term of said year, unto which day the said cause had come by regular continuance, the following entry of record was made in said cause. to wit:

JOSEPH LAWTON, exr. of Chas. Lawton, Martha Pollard, Hannah Mariah Kershaw, wife of James Kershaw, Sarah Mutrie, wife of Robert Mutrie, William Pollard and James Pollard,
vs.
THE UNITED STATES OF AMERICA.
} Land claim, 23,040 acres.

And now, at this day, comes the counsel for the said claimants, as well as the counsel for the said United States; and thereupon the counsel for the said claimants offered in evidence a survey and plat, made by James M. Gould, county surveyor of St. John's county, under the order of this court, which said survey bears date upon the 1st day of July, 1843. This survey is objected to by the counsel for the United States, because it is alle*d*ged that it does not conform to the grant, or to the calls of the grant. It was however allowed to be received and read in evidence, subject to the objection of the counsel for the United States, and without prejudice. The counsel for the claimants then offered the deposition of James Pellicier taken under commission, which was read in evidence. The testimony and answers of the witness in this deposition were objected to by the counsel for the United States as being irrelevant and improper, and the whole evidence objected to as being incompetent. The counsel for claimants says, that he offers the deposition, to show that there is such a tract of land, and to identify and locate it. The deposition was received, as tending to show that there is such a tract of land, &c., but subject to the objection of the counsel of the United States, as to its relevancy and effect. The counsel for claimants then offered in evidence the testimony of G. J. F. Clarke, taken before the board of land commissioners in 1823, on the 11th of December, in the case of John H. McIntosh against the United States, which is found in the volume of laws relating to public lands, printed in 1828, and compiled in obedience to a resolution of the House of Representatives of the 1st of March, 1826, and printed by an order of the House of Representatives, dated 19th of February, 1827.

It is admitted that Clarke is dead, but the counsel for the United States object to the reading of it, because the deposition offered was not be-

tween the same parties, as in this suit. The court decided that the testimony could not be admitted. The counsel for the claimants then offered in evidence a plan of the country, compiled from the maps and plats in the land office, showing the situation of the country in which said lands claimed by said claimants are located; and the evidence in said cause being now fully heard and received, the cause was submitted to the court for its decree therein.

Further hearing, and cause submitted.

And afterwards, to wit, on the twenty-sixth day of June, in the year of our Lord one thousand eight hundred and forty-four, being a day of June term, to which said day the said cause had come by regular continuance, the following entry of record was made in said cause, to wit:

JOSEPH LAWTON, executor, et al.
vs.
THE UNITED STATES OF AMERICA. } Land claim, 23,040 acres.

This cause having been submitted to the court for its decree therein on the first day of December, 1843, by consent, the same is now opened for the purpose of taking the evidence of James M. Gould, county surveyor of St. John's county, relative to the survey made by him under an order of this court in July, 1843, and his said evidence was reduced to writing, and the case closed.

Evidence and testimony offered and read in this cause at the hearing thereof, and referred to in the foregoing entries of record, numbered from one to eleven.

No. 1.

Offered and read by claimant.

[Memorial of James Darley to the governor, and his decree thereon.

Memorial.

To his excellency the Governor:

Don James Darley, a native of Great Britain, with the respect due to your excellency, says, that with the view of settling himself in this province under the protection of his catholic majesty, knowing the very great advantages that would result to the commerce of it from the article of lumber, if machinery for sawing is erected, for sawing for the consumption of the province, as well as for exportation; and wishing to dedicate his attention and funds to this object, whenever he may be in possession of the necessary right, he asks and supplicates your excellency will be pleased to grant to him from this time, in absolute property, six miles square of land, at the place called Dunn's Lake, upon the river St. John's, for the purpose aforesaid of establishing said machinery; which favor he hopes to merit from the justice of your excellency. St. Augustine Florida, 10th of November, 1817.

Decree.

ST. AUGUSTINE, 10*th of November*, 1817.

Taking into consideration the benefit and utility which ought to result to the improvement of this province by what the petitioner proposes,

There are granted to him, in absolute property, the six miles square of land which he solicits for said water saw-mill, and that it may be effected let there be issued to him, from the secretary's office, a certified copy of this petition and decree, which will serve him as title in form.

COPPINGER.

Thomas de Aguilar, sub lieutenant of infantry, and secretary of the government of this province, by his majesty.

I certify that the preceding copy is faithfully made from the original, and in compliance with what is ordered in the preceding decree, I give the present in St. Augustine, Florida, 10th of November, one thousand eight hundred and seventeen.

THOMAS DE AGUILAR.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,
Int. & Tran. Sup. Court E. D. F.

No. 2.

Offered by claimants, and admitted by counsel of the United States, to be in Clarke's handwriting.

Certificate and plat of survey.

I, Don George Clarke, captain of the northern district of East Florida, and by the government thereof appointed surveyor general of said province, do certify, that I have surveyed and delineated for Santiago Darley, a square of six miles of land, equal to twenty-three *three* thousand and four acres, on the west part of Dunn's lake, contiguous to the waters thereof, in its upper part, which lands were granted to him by the government on the 10th of Nov'r, of the present year. Said tract is conform. to the following plat, and to the copy thereof, which I keep. Northern district, 21st Dec., 1817.

[For plat see original.]

No. 3.

Will of James Darley, and letters testamentary, offered and read in evidence on the part of claimants.

In the name of God, amen. I, James Darley, of Tomoka, in the territory of East Florida, being of sound mind and memory, do make and ordain this to be my last will and testament.

Whereas, on the 16th day of February last past, I did execute a deed of manumission, to my four slaves, to wit: Maria, a negro woman, and

her three female children, Mary, Eliza and Sarah, which said deed I do hereby confirm. I give, devise, and bequeath to the said Maria and her three children, the following slaves, which are now my property, and in my possession, that is to say: Friday and Dido, his wife, and their three children, Henry, Dick and Molly; George and Lydia, his wife, and their two children, Louis and July; Peter and Theresa, his wife, and their two children, Jemmy and Thomas; Jim Le Book and Margaret, his wife, and the future increase of all the said female slaves. The whole number of the said slaves, and their future increase, to be kept together as one property, until Mary, the eldest daughter of Maria, shall attain the age of twenty years. At that time I desire the whole number of the said slaves and their increase to be valued, and appraised, by three proper persons, and one fourth part of their value, or any number of the said slaves equivalent to that amount, to be paid to the said Mary; and one other fourth part of said gross valuation, or equivalent number of the said slaves, to be paid or delivered to the said Maria, at the same time that Mary receives her proportion; and when the said Eliza, the second daughter of Maria, shall attain her twentieth year of age, then she shall be entitled to receive one half of the remaining number of slaves, or their value; and when Sarah, the third and youngest daughter of Maria, becomes twenty years old, then she shall receive the last remaining number of slaves, equal to one fourth part of the original number, with the issue and increase. In case of the death of the said Maria, or any one or more of her children, their properties to be equally divided amongst the survivor or survivors of them. The said negroes hereby given are to be kept employed upon the plantation, which I now possess in Tomoka, until the above division of them shall be made, and as hire of the same I desire that my executors pay, or cause to be paid, to the said Maria, three hundred dollars per annum, for the first four years after my decease, and four hundred dollars per annum for the next four years, and five hundred dollars per annum after the expiration of eight years after my decease, until the said Mary, eldest daughter of Maria, and Maria herself shall have received their respective proportions of the said slaves. Then I desire that the sum of three hundred and seventy-five dollars be paid to Maria for the use of Eliza and Sarah, as the *hire* of one half of the said slaves, which will then remain on the said plantation; and when Eliza shall have received her proportion, then I desire that two hundred and fifty dollars per annum, to be paid to Maria, for the use of Sarah, as the *hire* of the then remaining one fourth of the said negroes remaining on the estate; which said remaining one fourth of the said negroes, the said Sarah shall be entitled to withdraw from the said estate, as heretofore intended to be expressed.

I desire, that should Maria after my demise have occasion for, or require the services of the two female slaves, Margaret a woman, and Jenny a girl, that she shall have the right of withdrawing the said two slaves for her personal convenience, from the estate without any deduction being made, or taken off the annual allowance by this will ordered to be paid to them. I direct a comfortable house to be erected within the en-

closure of my yard, for the occupation of the said Maria and her children, and to be built within six months after my death, and that they be allowed as much land as they may require to cultivate. I give to the said Maria and children six chairs, two pine tables, a set or chest of drawers, and all the beds and bedding used by them, and whatever cooking implements or vessels they may require to be given them immediately. As long as the said Maria and her children may choose to reside on my said estate, I desire that one bushel and a half of corn to be given and delivered to them every seventh day, without any charge being made for the same. In case the annuity heretofore given to the said Maria and her three children, shall not be regularly paid quarterly, in each and every year, then I desire all the negroes given, or intended to be given, to the said Maria and her three children, to be removed from the estate where they now are, and hired out to some proper person, who shall pay their full hire, quarterly, to the said Maria and her children. I do desire to be fully understood upon this important point of my will, that the several negroes, or any one of them heretofore given to Maria and her children, shall at no time whatever be sold or given away, or otherwise conveyed, except after they have been divided, as heretofore directed, and not then under any pretence whatever, except such conveyance, sale, or gift be signed and executed by the said Maria and children, for their respective proportions, and by and with the consent, concurrence and approbation of their guardian hereinafter named, and one other of my executors. When the youngest of Maria's children shall be twenty years old, and all of them shall have received their respective proportions, as precedingly ordered to be given and paid to them, then I give to my sister, Mrs. Jonathan Pollard, of England, and her four children, all the rest, residue and remainder of my estate, real and personal, to be divided equally among them, or the survivors of them. I desire all my just debts to be paid out of my estate, but not to the prejudice or diminution of my bequest to Maria and her three children, but out of the crops or remaining of my estate, over and above what has been given to the said Maria and her children. I appoint Thomas Henry Dummet guardian of the said Maria and her three children, to see to that part of my will which relates to them, carried into effect, with the right of appointing a substitute, in case of his death; and I appoint my nephew Jonathan Pollard, and my friends Joseph and Charles Lawton, and the said Thomas Henry Dummet, executors of this my will. Signed and sealed as such, this twenty sixth day of March, in the year of our Lord one thousand eight hundred and twenty-nine.

JAMES DARLEY.

Signed, sealed and delivered by the testator, as for his last will and testament, in the presence of us, who in his presence, at his request, and in the presence of each other, have subscribed our names as witnesses thereto.

DOUGLAS DUMMET,
EMAL. WAL'R. ORMOND,
WILLIAM BELL.

Acknowledged by Douglas Dummet to be his signature, and the signatures of Em'l. Wal'r. Ormond and William Bell, proved by him, the said Douglas Dummet, on the 4th day of January, 1833.

Witness my hand, the 4th day of January, 1833.

DAVID R. DUNHAM,
Presiding justice, Mosquito county.

Whereas, the woman Maria, named in the preceding will, has had and been delivered of another female child, named Susannah, since the date of the said will: Now know all men, by this codicil, that it is my will, that the said child Susannah, shall be provided for out of that part of my property, given to my sister and her children, with such a portion of negroes or money, as shall be fully equal to the proportion already given to either of the other children of the said Maria, and not out of that part so already given to the said Maria and her other children.

Signed, sealed, and delivered, by James Darley, as a codicil to his last will, in the presence of us, who in his presence, at his request, and in the presence of each other, have subscribed our names as witnesses hereto.

Seventeenth day of June, 1831.

JAMES DARLEY.

In our presence:

JOSEPH DELESPINE.
HORATIO S. DEXTER.

Letters testamentary.

THE TERRITORY OF FLORIDA:

To all to whom these presents shall come, greeting: Know ye, that on the fourth day of January, one thousand eight hundred and thirty-three, before David R. Dunham, esq., judge of the county court for the county of Mosquito, the last will and testament of James Darley, late of Tomoka, in said county, deceased, (a copy whereof is hereto annexed,) was produced and proved, and was, and is now admitted, allowed, and approved, and recorded, and letters testamentary under the said will, were ordered and directed to be granted, and issued in due form of law, to Charles Lawton, named and appointed in and by said last will and testament as an executor thereof. Now, know ye, that in virtue of the premises, administration of all and singular the lands and tenements, estate, goods and chattels, rights and credits, of the said James Darley, deceased, and any way concerning his last will and testament, is by these presents granted unto the said Charles Lawton, an executor in and by the said last will and testament named and appointed; he having been duly sworn well and truly to perform the said last will and testament, and to pay all the just and lawful debts of the said James Darley, so far as his estate, rights and credits, will extend, and that he will make a true and correct inventory of the same, and render a true account of his administration when thereto required.

Witness, David R. Dunham, judge of the county court of the county of Mosquito, this fourth day of January, one thousand eight hundred and thirty-four.

DAVID R. DUNHAM.

TERRITORY OF FLORIDA, *St. John's county, ss:*
City of St. Augustine.

I, Peter B. Dumas, clerk of the county court of St. John's county, and by *law the acting clerk of Mosquito county*, do hereby certify the foregoing instruments of writing to be true and correct copies of the will and codical thereto, of James Darley, late of Tomoka, and the letters testamentary granted to Charles Lawton, an executor in said will named, and recorded according to law.

Witness my hand and seal of St. John's county court, the thirteenth [L. S.] of July, A. D. 1841.

P. B. DUMAS, *Clerk C. C.*
And acting clerk of Mosquito county.

TERRITORY OF FLORIDA, *county of Mosquito:*

I have this day examined the accounts, vouchers, and receipts of Charles Lawton, executor of the estate of James Darley, deceased, numbered and marked from A to G inclusive, and herewith filed in the office of the clerk of county court of Mosquito county; and I do hereby pass, allow, and approve the said accounts, vouchers, and receipts, whereby it appears to me that a balance is due from the said estate to the said executors, Charles Lawton, of $4,267\frac{71}{100}$ dollars, on the 30th of June, 1837.

All of which I do hereby decree and certify, and direct this my decree to be entered of record. Given under my hand this 14th day of June, 1837.

DAVID R. DUNHAM,
Judge of county court, Mosquito county, territory of Florida.

TERRITORY OF FLORIDA, *St. John's county, ss:*
City of St. Augustine, ss:

I, Peter B. Dumas, clerk of the county court of St. John's county, and by law the acting clerk of Mosquito county, do hereby certify the foregoing instrument of writing to be a true and correct copy of the original certificate on file among the papers of Mosquito county, and on deposit in the office of the clerk of St. John's county court.

Witness my hand and the seal of St. John's county court, the thirteenth [L. S.] day of July, A. D. 1841.

P. B. DUMAS, *Clerk C. C.*
And acting clerk of Mosquito county.

No. 4.

Letters testamentary to Joseph Lawton, upon the estate of Charles Lawton. Offered and read in evidence on the part of claimants.

TERRITORY OF FLORIDA, *St. John's county.*

To all to whom these presents shall come, greeting: Whereas the last will and testament of Charles Lawton, late of the city of Charleston, South Carolina, deceased, has been admitted to probate. Now, be it known, that letters testamentary and of administration on the estate of the said Charles Lawton, deceased, be and is hereby granted unto Joseph Lawton, an executor named in said will.

Witness, the hon. Elias B. Gould, judge of the county court for the county aforesaid, at the city of St. Augustine, this thirteenth day of July, in the year of our Lord one thousand eight hundred and thirty-nine.

BERNARDO SEGUI, *Clerk C. C.*

TERRITORY OF FLORIDA, *St. John's county,*
City of St. Augustine, ss:

I, Peter B. Dumas, clerk of the county court of St. John's county, do hereby certify the foregoing instrument of writing to be a true and correct copy of the letters testamentary and of administration, granted to Joseph Lawton, and on file in the office of the clerk of St. John's county.

Witness my hand and the seal of the county court of said county, the [L. S.] 13th day of July, A. D. 1841.

P. B. DUMAS, *Clerk C. C.*

No. 5.

Testimony of Antonio Alvarez, a witness produced, sworn, and examined on the part of the claimants.

Witness says, I am keeper of the public archives of East Florida, (a certificate with the name of Thomas de Aguilar signed to it, being shown to witness,) he says, "this document was transferred to my office by the land commissioners. It is in the handwriting of Thomas de Aguilar, and is signed by him. The certified copy here produced and filed in this cause, (by me certified,) is a true copy of this paper. This certificate of Aguilar came into my office in 1829, or early in 1830. This claim of Darley was filed before the board of land commissioners, 29th Nov., 1823. The plat and survey, it appears, were filed with the commissioners on that day. I was in the secretary's office here in 1817. The paper which *we* used was from Havanna; *we* usually got our paper there; never got American paper that I remember. The inhabitants here were in the habit of using American, or English, or Spanish paper. Paper imported from the United States was common in those days.

Being cross examined, witness says, the paper on which the Aguilar certificate is written is Spanish paper. The survey is on American paper. Clarke did not do his business in the secretary's office.

No. 6.

Testimony of Mauricio Sanchez, Joseph S. Sanchez, and John M. Fontane, witnesses produced, sworn, and examined on the part of the claimants.

Mauricio Sanchez, sworn, says, I know the lake called Dunn's lake; have known it about fourteen years. It is on the east side of the St. John's river, and about fifty miles S. W. of St. Augustine. I know of no other lake of that name; it empties into the St. John's. The lake is about fifteen miles long, and about three or four miles wide. I lived on the lake with my Uncle Ramon Sanchez, above six or eight years. This is Dunn's lake on the St. John's.

Cross examined by United States attorney.

Witness says, from the river St. John's, you go about ten miles through a deep creek to the lake. It is about five miles to Lake George. The St. John's river makes a bend west of this lake, and leaves a deep strip between it and the river St. John's. This strip of land is sometimes called "Cows-neck," and sometimes Dunn's lake neck. There is a swamp on the west side of the lake, continuing eight or nine miles up from the mouth of the outlet. The spots of hard land, and some swamps and sawgrass, &c.

By the court.

If I had a grant on Dunn's lake, I think I should have it lying on Dunn's lake. The strip, or Cows-neck, is from 6 to 10 miles wide, perhaps more. The outlet of the lake, by the meanders, is about ten miles, in a straight line, perhaps six miles. This outlet is a narrow creek very deep, sometimes an hundred yards wide, sometimes narrower.

Joseph S. Sanchez, being duly sworn, says:

I have known Dunn's lake for fifteen years. I have resided there, and know it well. It empties into the St. John's by a creek called Dunn's creek. The lake is east of the St. John's; it is about five or six miles from the St. John's. The widest part of the strip of land is near the beginning of the creek.

Cross examined by counsel for the U. States.

I know of no *place* on the St. John's river called Dunn's lake, except this. The mouth of the outlet in the St. John's is about seven miles above Pilatka. From Hambly's store on the St. John's it is about 7 or 8 miles across to the lake, above there it is perhaps four or five. Dunn's creek is about 20 or 30 feet wide, and in going up into the lake, you go in a south easterly direction, about ten miles by the meanders of the creek, and about seven miles in a straight line. The lake is about 15 miles long, and about 3 miles wide on an average, and lies nearly north and south. A swamp extends up the lake about half way on the west side. Then there is some swamp, some hammock, and some hard land.

The average width of the strip of land lying between the lake and river St. John's is about five miles. In some places, more. The widest part of the strip is at the north end of the lake. From the middle of the west side of the lake, I should think it would be about five and a half miles to the St. John's, and above that, the average width is about five miles between the lake and river St. John's.

By Dunn's lake on the river St. John's, I understand, a Dunn's lake on the St. John's. But I know nothing about Dunn's lake.

John M. Fontane being duly sworn, says:

I have seen a survey made for James Darley, by Geo. J. F. Clarke. I received fifty dollars from Darley for Clarke, for making this survey, by an order from Clarke, about 1820. I understood it was for making this survey.

There is a Dunn's lake which empties into the St. John's. It is the only one that I know of. I have never been there.

No. 7.

Certified copy of survey in Spanish, from the archives' office. Offered by claimants.

Don Jorge Clarke, &c.

Certifico, que tengo medido y deslindado a Don Santiago Darley, seis millas en quadro de tierras, que son equivalente a beinte y tres mil y quatro acres de tierra, por la parte al Oeste de la Laguna de Dunn, y lindando por la aguas de la d'ha Laguna, moy arriba que le fueron concedidos por el Gobierno en diez de Noviembre del presente año, cuyo terreno conforma con el plano que sigue y su exemplar que conservo. Partido Septentrional, 21 de Diciembre, de 1817.

Signed, JORGE J. F. CLARKE.

[For plat see original.]

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original, now on file in my office, to which it was transferred acording to law, by the register and receiver of the land office, while acting as land commissioners, as part of the papers relative to private land claims in Florida aforesaid.

Witness, my hand and seal of office, at the city of St. Augustine, Ter-
[L. S.] ritory of Florida, this second day of December, A. D. one thousand eight hundred and forty-three.

ANTONIO ALVAREZ, *K. P. A.*

No. 8.

Certificate, plat of survey, and survey bill of the said premises made under an order of court, in July, 1843, offered in evidence on the part of the claimants, and objected to on the part of the United States, because it is alleged that it does not conform to the calls of the grant, but received, subject to objection.

(See survey marked A, at end of record.)

No. 9.

Offered in evidence on the part of the claimants, being the deposition of James Pellicier, taken under commission. The testimony of the witness, and his answers, were objected to on the part of the United States, but received, however, for certain purposes hereinbefore stated.

TERRITORY OF FLORIDA,
St. John's and Mosquito counties:

By his honor Isaac H. Bronson, judge of the superior court of the eastern district of Florida, to George R. Fairbanks, esquire, greeting:

Whereas, there is a certain matter of controversy now depending in the superior court for said district, between the heirs of James Darley and the United States, land claim; and whereas, James Pellicier is a material witness in said matter of controversy, and cannot attend our said court in person, without manifest inconvenience: Now, know ye, that we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you are hereby authorised and required to cause the said James Pellicier personally, to come before you, and after being duly sworn, to examine him concerning the said matter of controversy, agreeably to the interrogatories hereunto annexed; and the answers to the same being plainly and distinctly written, you are to send them closed up, under your hands and seals, to our said court, to be held on the 30th day of November instant, together with this writ.

Witness the hon. J. H. Bronson, judge of said court, this 29th day of November, A. D. 1843, and of the independence of the United States the 67th.

[L. S.]

GEO. R. FAIRBANKS, *Clerk.*

Instructions to commissioners.

Before proceeding to examine the witness, the commissioners must respectively make oath or solemn affirmation, that they will faithfully execute their commission; any two of the commissioners may act.

They must then take the oath or solemn affirmation of the witness, that he will well and truly answer the interrogatories put to him by the commissioners.

The commissioners will then proceed to take down in writing the answers of the witness, to each and every part of said interrogatories; and they are requested to be careful that no part of any of the interrogatories shall remain unanswered; and the answers of the witness must be signed by him.

When all the testimony is taken, the commisioners must write at the bottom: "We, whose names are hereunto subscribed, do certify, that after being sworn ourselves, we did examine the witness named in the annexed commission under oath, and his answers to the interrogatories annexed to said commission are truly and correctly herein set forth."

The commissioners will then attach all the papers together, to wit, the commission, the interrogatories, and the answers, enclose them in a packet, seal it with several seals, write their names across the seals, on

the outside, on the left hand corner, write the title of the suit, as mentioned at the head of the interrogatories; and, having directed it to George R. Fairbanks, esqr., clerk of the superior court, at St. Augustine, E. F., put the packet in the post office, or send it as counsel may specially direct, postage paid.

Direct interrogatories.

IN THE SUPERIOR COURT,
District of East Florida:

EX'R ESTATE OF JAMES DARLEY,
vs.
THE UNITED STATES.
} Land claim, 23,040 acres.

Interrogatories to be propounded to James Pellicier, a witness in the above entitled cause, and to be taken before George R. Fairbanks, esq., clerk, and to be used in evidence on the trial thereof.

First. Were you or not acquainted with James Darley in his lifetime? Where did he reside, previous to the year 1817, and was he or not a Spanish subject?

Second. Have you or not any knowledge of a concession of land made by the Spanish Government to the said James Darley, on Dunn's lake?

Third. Do you or not know of the survey of a tract of land on Dunn's lake, in favor of James Darley? If you do, say in what year that survey was made, who was the surveyor, and who the chain carriers? Were you, and who else were, present at this survey; and what was the number of acres to be surveyed, as near as you can recollect?

Fourth. State where the surveyor commenced his survey, whether he made any marks, and what marks, and how far the survey extended, and what prevented the surveyor from extending his survey further. State all the particulars, and what marks, if any, you made on the line.

Fifth. Say if it was the north or south line that McHardy surveyed.

Sixth. Were you or not with James M. Gould, esquire, at the time he made a recent survey, of a tract of land as claimed by the heirs of Darley? State whether or not you pointed out the starting point of this survey; was it the same at which McHardy commenced; did you see any mark there, such as you judged to be the same that was made by McHardy, or not?

Seventh. Did you or not see other marks? State all the particulars.

Eighth. State any other facts within your recollection.

E. B. GOULD,
Att'y for claimants.

Cross Interrogatories.

DISTRICT OF EAST FLORIDA:

THE UNITED STATES,
ads.
EXE'RS OF JAMES DARLEY.
} Land claim, 23,040 acres.

Cross interrogatories to be propounded on behalf of the United States to James Pellicier, a witness for the petitioner in the above entitled cause.

First. If you say that you know James Darley, please state whether he is now alive or dead, when and where he died, and his age at the time of his death, and your age now.

Second. Where was said James Darley born; was he not born in Scotland, or in some other foreign country?

Third. If you say that said James Darley was a Spanish subject, state how you know that fact; do you know it of your own knowledge?

Fourth. If you answer the second direct interrogatory in the affirmative, please state how you obtained such knowledge; was it not from report or hearsay, or the statements of said James Darley himself?

Fifth. If you answer the third direct interrogatory in the affirmative, please state how you obtained your knowledge of said survey; was it not from report or hearsay, or the statements of the said James Darley himself; did you assist in making a survey for said James Darley, at Dunn's lake? If you did, state when and who was the surveyor, whether you know this of your own knowledge or from hearsay.

Sixth. If you state who were the chain carriers, state whether you know this fact; do you know it of your own knowledge, or only from hearsay, or the statements of said James Darley himself?

Seventh. If you state where the said surveyor commenced his survey, or testify as to other matters inquired of in the fourth direct interrogatory, please state how you know that fact; were you present at the making of the said survey?

Eighth. How old were you at the time when you say the said survey was made; was said James Darley present at the making thereof; who was present? State the names (and age as near as you canrecollect) of all the persons who were present.

Ninth. If you answer the sixth direct interrogatory in the affirmative, please state what marks you pointed out to the said James Gould, esq., and how you "judged any of said marks to be the same that were made by the said McHardy."

Tenth. What were said marks; describe them, and also all the other marks that you there saw particularly; were there any *letters* amongst them? If there were, state what letters.

Eleventh. Is there any other matter or thing within your knowledge, material or pertinent to the issue in this case; if there is, please to answer the same as fully and particularly as though you were now thereto specially interrogated?

THO. DOUGLAS,
U. S. Att'y, &c.

Answers to direct interrogatories.

DISTRICT OF EAST FLORIDA, SUPERIOR COURT,
St. John's and Mosquito counties:

HEIRS OF DARLEY, vs. THE UNITED STATES. } Land claim.

Deposition of James Pellicier, a witness, sworn, and examined on the part of the claimants upon the annexed interrogatories.

To the first interrogatory witness answers:

I was acquainted with James Darley in his lifetime. He resided in the city of St. Augustine, previous to the year 1817; he was a merchant at that time; I believe that he was a Spanish subject, and have no doubt of it.

To the second interrogatory he replies:

I understood from the said James Darley, at that time, that he had received a grant of land from the Spanish Government, situated on Dunn's lake. I think I so understood from him about the early part of 1817, or the early part of 1818, I am not sure which. The quantity I think was six miles square, granted for a mill seat, I think. It was a fact generally known in the neighborhood where I lived, at Matanzas.

To the third interrogatory he answers:

In the year 1818, I think in the early part, between the middle of March and the middle of April, in that year, I was employed by Mr. James Darley, in assisting him to make a survey of a tract of land claimed by him on Dunn's lake. Robert McHardy was the surveyor employed. Two black men, one called George Bulger, belonging to Mr. Bulger of St. Augustine, and Peter Survel, a free black mulatto, were the chain carriers. I sometimes carried the compass, and sometimes the chain, as Mr. McHardy directed me. Mr. Gibson of Charleston, and Mr. Alexander of Charleston, were both present at said survey, and I understand are neither of them living. I cannot recollect the number of acres to be surveyed; I think it was six miles square.

To the fourth interrogatory witness answers:

The surveyor commenced his survey on the edge of Dunn's lake at the south end of Cowen's old field, as it was called by the guide, Peter Survell; we run the line from thence, from three quarters of a mile to a mile and a half, west from the lake, and blazed the trees with one or two chops above the blazes; these marks were made by me. And then on account of some misunderstanding between Mr. Darley and Mr. McHardy, the surveyor, the survey was stopped. The misunderstanding arose from Mr. McHardy's wishing to see the order of survey which Mr. Darley refused to exhibit to him, although he said he had it with him; we then broke up the survey, and went back to Mr. McHardy's, on the Tomoka.

To the fifth interrogatory witness replies:

The line surveyed by Mr. McHardy was intended for the north line of the tract.

To the sixth interrogatory, witness replies:

I was with James M. Gould, esquire, at the time he made a recent survey of a tract of land, as claimed by the heirs of Darley. I showed Mr. James *the* Gould the same point at which we had commenced the survey, when I was with Mr. McHardy. I saw and pointed out to Mr. Gould the same marks which I had made when I was with Messrs. Darley and McHardy. I showed him a blazed tree, as the starting point.

To the seventh direct interrogatory witness says:

I saw several blazes about the woods, but no other surveyor's marks. I did nothing more than to show them those old marks which I had made.

To the eighth and last direct interrogatory witness says:

That I do not know any other matter or thing pertinent to, or relating to, the subject matter of these interrogatories.

JAMES PELLICIER.

I, Geo. R. Fairbanks, hereby certify, that after being duly sworn myself, I did examine the witness, named in the annexed commission, and his answers to the direct interrogatories are truly set forth.

G. R. FAIRBANKS,
Commissioner.

Answers to cross interrogatories.

Deposition of James Pellicier upon the annexed cross interrogatories.

To the first cross interrogatory witness replies:

I know James Darley. He died in St. Augustine, in the summer of 1832. I do not know of his age at the time he died, he must have been between forty-five and fifty years of age, when he died. I am nearly forty-seven years of age now.

To the second cross interrogatory witness answers:

I have heard Mr. Darley say, that he was born in England; have often heard him say that he was of English birth.

To the third cross interrogatory witness answers:

I have no other knowledge of James Darley being a Spanish subject, than from having so understood from himself, and from the fact of his enjoying liberties and privileges which only Spanish subjects were permitted by the laws of the province to enjoy; he was reputed to be a Spanish subject.

To the fourth cross interrogatory, witness says:

My answer to the second direct interrogatory embraces all my knowledge on the subject, and is as full as I can make it.

To the fifth cross interrogatory, witness says:

I obtained my knowledge of the survey spoken of, by having been present at, and assisting in making, such survey at Dunn's lake as before spoken of. It was in the early part of 1818; it might have been in the early part of 1817; it strikes me that it was in the early part of 1818. Mr. McHardy I know of my own knowledge was the surveyor.

To the sixth cross interrogatory, witness says:

I know who were the chain carriers of my own knowledge, having been present at, and assisting in, the survey.

To the seventh cross interrogatory, witness answers:

I was present at the making of said survey, and know where the survey commenced from my own knowledge; the other portions of the fourth direct interrogatory are fully answered in the answer to that interrogatory.

To the eighth cross interrogatory, witness says:

I was about the age of twenty-one years when that survey was made; the said James Darley was present at the making of said survey, and also a Mr. Gibson, and a Mr. Alexander of Charleston, and the two chain carriers, and myself, and Mr. McHardy, made up our party. Messrs. Gibson and Alexander took no part in the survey; Mr. Gibson was about twenty-five years of age; Mr. Alexander must have been full fifty years of age, or upwards; George Bulgous must have been about forty years of age, and Peter Survel, the other chain carrier, must have been about thirty years of age; Mr. McHardy was about forty years of age, and Mr. Darley, from thirty to thirty-five years of age, at that time.

To the ninth cross interrogatory, witness answers:

I pointed out to Mr. James M. Gould the blazes, with one or two chops above, I think two chops; I know them to have been the same marks made by me, on occasion of the survey made by McHardy; I judged them to be the same marks, from having made them myself, and from the fact of no other surveyor at that time using the same marks, besides McHardy; these were the marks always made by McHardy in all his surveys.

To the tenth cross interrogatory, witness answers:

Said marks made on said survey were such as I have just described, a blaze with one or two chops above it, I think two chops; we made no other marks, except these blazes and chops. I saw no surveyor's marks other than *than* these, at that time or since; I never saw any letters at or about that place.

To the eleventh cross interrogatory, witness answers:

There is no other matter or thing within my knowledge, material or pertinent to the issue in this cause.

JAMES PELLICIER.

I, George R. Fairbanks, the commissioner named in the annexed commission, do duly certify, that after having been duly sworn myself, I examined James Pellicier, a witness named in said commission, upon oath, and that his answers to the annexed direct and cross interrogatories are truly set forth herein, this 30th Nov., 1843.

GEO. R. FAIRBANKS, *Commissioner.*

No. 10.

Offered by claimants, and received, subject to objection, on part of the United states.

Being a plan of the country, compiled from the maps and plats in the land office, showing the situation of the country in which said lands claimed by the claimants are located.

(See map appended hereto, marked B.)

No. 11.

Testimony of James M. Gould, a witness, duly sworn and examined on the part of the claimants.

James M. Gould, being duly sworn, says:

The survey made by me, and now before me, is a correct survey, according to the certificate appended thereto. I took with me the maps from the land office.

I found the marks of the government surveys, the sections and township lines; I took with me as a guide, Mr. James Pellicier; I found trees marked, running nearly the same as the northerly line of the tract leading from the lake out in the woods, they were old marks; Mr. Pellicier pointed out to me a tree with old marks, and stated that within a hundred yards of that tree was the line of the grant, that is the beginning corner; could not tell whether the marks on that tree were surveyor's marks or not; Pellicier represented it as a starting point, or as a tree which he recalled to mind as indicating about where the starting point was. He did not state to me that it begun at a stake; he did not positively point out any tree as the starting point; he said the tract was south of that tree. I then sought for a line, and found the line spoken of; I did not find the line running from that tree, I found the line I suppose about a hundred yards south from that tree; the marked line of trees continued for half a mile from the lake, until we came to a pond; I found no old marks beyond and westwardly of the pond; my line varies a little from that line; it varies, however, several degrees; that old line was recognised by Mr. Pellicier as the line he had assisted in running; he stated that they were marked with a blaze and two chops, and I found trees marked with a blaze and two chops, which were old marks; I did not look for any other trees marked, after I had found the old line; I saw no other old marked trees; they varied a little from the line I run; it bore a little more northerly than mine; I ran the line I did, because it was the course called for by Geo. J. F. Clarke's survey; the line varied northerly perhaps ten degrees; I ran as I did, moreover, because the order of court directed me as nearly as possible to conform to Clarke's survey.

Opinion and decree.

And afterwards, to wit, on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and forty-four, at the court house aforesaid, being a day of the term of June, the following opinion and decision was pronounced by the court, in said case, in the words and figures following, to wit:

DISTRICT OF EAST FLORIDA,

In Superior Court:

HEIRS AND EXECUTORS OF JAMES DARLEY, deceased, vs. THE UNITED STATES. } In equity.

Land claim, 23,040 *acres. Opinion and decision.*

In this case the claimants seek the confirmation of a land grant, alleged to have been made by Governor Coppinger, on the 10th Nov'r, 1817, for six miles square.

The proofs show, that on the tenth day of November, in the year of our Lord one thousand eight hundred and seventeen, James Darley pre-

sented his petition to the Governor, in which, after stating his intention of settling in the province, and "knowing the great advantage that would "result to the commerce of the province, from the article of lumber, if "machinery for sawing is erected, and wishing to dedicate his attention "and funds to that object," he solicits the governor to grant him "in ab- "solute property, six miles in a square of land at the *place called Dunn's* "*lake*, upon the river St. John's, for the purpose aforesaid, of establish- "ing said machinery." On the same day the governor "taking into "consideration the benefit and advantage which ought to result to the "improvement of the province, by what the petitioner proposes," grants "to him in absolute property, the six miles in a square of land, which he solicits for said water saw-mill."

It cannot be overlooked, in examining the papers thus far, that the evident intention of the Spanish Governor was, that a saw-mill should be erected on the lands thus granted, and that that was the sole and only consideration for the grant; and it is singular that the Governor did not, as in all other cases of mill grants, make the building of a mill a condition precedent to the giving of an absolute title; for I believe there is no other case of a mill grant, by the Governor of East Florida, where the absolute title was not made to depend upon the building of the mill, unless other considerations entered into the grant; but it seems that for some reasons best known to himself, Governor Coppinger departed from the usual form, and dispensed with the usual conditions, inserted in such grants, and gave the land in "*absolute property*," to the petitioner, trusting to his good faith to build the mill, which the Governor himself sets forth as the sole consideration of the grant. If, therefore, the Governor was willing to take that matter upon trust, and to make the grant absolute, and without condition, as it seems he did do, it is not within the province of this court to say that the grant is void, because the condition was not complied with, or the consideration for which it was made was not in fact rendered.

According to the principles which have heretofore governed this court in the adjudication of these land cases, the proofs seem to be sufficient to warrant a confirmation of the grant, and upon the testimony exhibited I consider the claimants entitled to a decree of confirmation; and after a careful examination of the recent survey, made by James M. Gould, and the testimony connected therewith, I think that the location and boundaries of the tract, as defined in that survey, are according to the calls of the grant; and all things considered, it is, perhaps, as fair and proper a location as can well be made.

It is manifest that Clarke's survey or location, or that which was pretended to have been made by him, (and of which a plat has been given in evidence,) could not be found, and I presume for the obvious reason that no survey was in fact ever made by him. The recent survey, therefore, could not follow his old survey, but the courses of the different lines of the tract, adopted by the surveyor recently, are the [same] as Clarke's; and on an inspection of the map of the adjacent country, I think that the location and survey, as made by Gould, not only follows the calls of the

grant in all essential particulars, but corresponds, so far as it can, with Clarke's pretended survey.

The grant is therefore confirmed according to the recent survey of Gould, and a decree will be entered accordingly.

June 28th, 1844. J. H. BRONSON, *Judge.*

Decree of Confirmation.

And afterwards, to wit, on the same twenty-eighth day of June, being a day of the term aforesaid, before the court aforesaid, the decree of the said court in the said cause was duly entered of record, in the words and figures following, to wit:

JOSEPH LAWTON, executor of Charles Lawton, Martha Pollard, Hannah Maria Kershaw, wife of James Kershaw, Sarah Mutrie, wife of Rob't. Mutrie, William Pollard and James Pollard, children of Martha Pollard,
vs.
THE UNITED STATES OF AMERICA. } Land claim, 23,040 acres.

And now, at this day, come the said claimants, by Elias B. Gould, esq., their solicitor, and the said United States by Thomas Douglass and William P. Duval, esqr's, their solicitors, and this cause having been finally closed, and submitted on the 20th inst., and the court having examined the claim of the said petitioners, and the answer of the attorney of the United States, together with the evidence and testimony filed herein, and having maturely considered the same, doth adjudge and decree that this claim is valid, and that in accordance with the laws and customs of Spain, and under and by virtue of the late treaty of amity, settlement, and limits, between the United States of America and the King of Spain, ratified by the President of the United States on the 22d day of February, 1821, and under and by virtue of the laws of nations, and of the United States, the said grant of land mentioned and set forth in the petition of the said claimants ought to be, and the same is hereby confirmed to the said claimants, so far and to such extent as the United States of America can, or ought to confirm the same, and without prejudice to the rights of third persons, not parties to this suit; and that the said claimants are the true and lawful owners thereof, as against the United States, and all persons claiming, or to claim, by, through, or under them.

And it is further ordered, adjudged, and decreed, that the location, extent, and boundaries of the said tract, or grant of land, hereby confirmed to the said claimants, shall be as located, surveyed, and marked by James M. Gould, in the month of July, 1843, and as described in a plat of the said survey, given in evidence, and filed in this cause, wherein and whereby the said grant or tract of land is bounded and described as follows, "beginning at a water oak in the unsectioned part of township twelve, range twenty-eight south and east, on the west bank of Dunn's lake, marked Dxii, and running south seventy degrees west, seventy-five

chains, where the line between the ranges twenty-seven and twenty-eight is intersected at a point in section twenty-five, township twelve, range twenty-seven, forty-two chains from the north line thereof; then south seventy degrees west, four hundred and five chains, through sections twenty-five, twenty-six, thirty-five, thirty-four, and thirty-three, of said township, to a point in section five, township thirteen, range twenty-seven. Thence south, twenty degrees east, three hundred and thirty chains, through sections five, eight, seventeen, twenty-one, and twenty-eight, to the east bank of lake George. Thence along the bank of said lake to a water oak, marked Dxii, 155 chains. Thence through section thirty-four, thirty-five, thirty-six, of said last mentioned township, and sections thirty, twenty-nine, twenty-eight, and twenty-two, of township thirteen, range twenty-eight south and east, four hundred and eighty chains, to a pine marked Dxii. Thence north twenty degrees west, one hundred and ninety chains, through sections twenty-two, sixteen and nine, to Dunn's lake; and thence along the west bank of Dunn's lake to the place of beginning; containing, besides the parts of sections above mentioned, full sections numbers one, two, three, four, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven, of township thirteen, range twenty-seven south and east, and sections Nos. five, six, seven, eight, sixteen, seventeen, eighteen, nineteen, twenty, and twenty-one, of township thirteen, range twenty-eight, and section thirty-six, of township twelve, range twenty-seven."

And as between the said claimants and the United States, or those claiming under them, the foregoing shall be deemed and taken to be the true location, description, and boundaries of the said grant.

Appeal by United States.

And afterwards, at the same term of June, in the year of our Lord one thousand eight hundred and forty-four, and on the same twenty-eighth day of said month of June, the following appeal on the part of the United States, was entered of record in this cause, to wit:

The United States of America, ads. Joseph Lawton, executor of Charles Lawton, Martha Pollard, Hannah Maria Kershaw, wife of James Kershaw, Sarah Mutrie, wife of Robert Mutrie, William Pollard and James Pollard, children of Martha Pollard.	Land claim, 23,040 acres.

This day came as well the attorney of the United States, for this district, as the solicitor for the said claimants; and the said attorney of the United States moved the court, that an appeal be granted in this case, for and on behalf of the United States, from the decree of this court, to the Supreme Court of the United States, and that a citation, with notice of said appeal, may be forthwith issued by the clerk of this court to the appellees, and that the same be served by the marshal of this district upon

the said appelees, or their solicitor or agent, and returned to this court within thirty days from the issuing thereof.

Citation of appeal.

In pursuance of the foregoing order, a citation of appeal was duly issued in this cause; which said citation, and the return of the marshal of this district thereon, are in the words and figures following, to wit:

The President of the United States, to Joseph Lawton, executor of Charles Lawton, deceased, and to Martha Pollard, and to Hannah Mariah Kershaw, wife of James Kershaw, Sarah Mutrie, wife of Robert *wife of Robert* Mutrie, William Pollard and James Pollard, children of Martha Pollard, or to your solicitors, attorneys, or agents, or any of them.

You are hereby cited and admonished, that an appeal has been taken from the decree of the superior court, for the district of East Florida, to the Supreme Court of the United States, in a certain claim to twenty-three thousand and forty acres of land, wherein you, the said persons before named are claimants, and the said United States respondents; and that the record in said cause will be forwarded to the said Supreme Court, to be placed on the docket of said court, at the next term thereof to be holden on the first Monday of December next.

Witness the honorable Isaacc H. Bronson, judge of said superior court, at the court house in the city of St. Augustine, this 9th day of August, 1844.

[L. S.]

GEO. R. FAIRBANKS, *Clerk.*

Marshal's return thereon.

And afterwards, to wit, on the thirteenth day of August, in the year of our Lord one thousand eight hundred and forty-four, the marshal of the said district returned the citation aforesaid to the clerk's office aforesaid, with his return thereon, made in the words and figures following, to wit:

Return.

Received 9th August, 1844; and on the 13th Aug., 1844, delivered a copy to Elias B. Gould, esq'r, solicitor for the claimants within named.

JOHN BEARD,
U. S. marshal, district E. Florida.

SUPERIOR COURT, *district of East Florida:*

I, George R. Fairbanks, clerk of the said court for the district aforesaid, do hereby certify, that the foregoing one hundred pages contain a full, true, and complete transcript of the record and proceedings had in the case therein named in my charge; and that the survey and certificate thereto attached, marked A, and made a part of this record, and the map or plan of the country, marked B, also attached hereto, are faithfully taken and copied from the said document, as offered in evidence in said cause, on file in my office.

In testimony whereof, I have hereto set my hand, and the seal of said court, at St. Augustine, this 2d day of September, 1844.

[SEAL.]

GEO. R. FAIRBANKS, *Clerk.*

By the hon. Isaac H. Bronson, judge of the superior court for the district of East Florida:

To all to whom these presents shall come, or be made known, greeting:

Know ye, that George R. Fairbanks, who hath signed the foregoing attestation, is clerk of the said court, for the district aforesaid; that all due faith and credit are, and ought to be, given to his acts as such, and that the foregoing attestation is in due form of law.

In testimony whereof, I have hereunto set my hand, and caused the [SEAL.] seal of the said court to be hereunto affixed, this 2d Sept., 1844.

J. H. BRONSON, *Judge, &c.*

A.

Certificate and plat of survey, made by James M. Gould, referred to on page 73 of record.

In pursuance of an order of the judge of the superior court, for the district of East Florida, I have surveyed for the heirs of James Darley, deceased, a tract of land, six miles square, situated on the west side of Dunn's lake, and contiguous to the head waters thereof, and meted and bounded as follows: Beginning at a water oak in the unsectioned part of township 12, range 28, S. & E., on the west bank of Dunn's lake, marked Dxii, and running S. 70 W., 75 chains, where the line between ranges 27 & 28 is intersected at a point in section 25, township 12, range 27, forty-two chains from the north line thereof; thence S. 70 W., 405 chains, through sections 25, 26, 35, 34, & 33, of said township, to a point in section 5, township 13, range 27; thence south 20 E., 330 chains, through sections 5, 8, 17, 21 & 28, to the east bank of Lake George; thence along the bank of said lake, to a water oak, marked Dxiii, 155 chains; thence through sections 34, 35 & 36, of said last mentioned township, and section 30, 29, 28 & 22, of township 13, range 28, S. & E., 480 chains, to a pine marked Dxii; thence N. 20 W., 190 chains, through sections 22, 16 & 9, to Dunn's lake; and thence along the west bank of Dunn's lake to the place of beginning; besides the part of sections above mentioned, full sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27, of township 13, range 27, S. & E., sections 5, 6, 7, 8, 16, 17, 18, 19, 20, 21, of township 12, range 27.

St. Augustine, July 21st, 1843.

JAMES M. GOULD,
County Surveyor, St John's County.

B.

Map or plan of country, referred to on page 88 *of record.*

THE HEIRS OF JAMES DARLEY, dec'd, vs. THE UNITED STATES. } Land claim, 23,040 acres.

Elias B. Gould, being duly sworn, says, that the annexed diagram was compiled by him from the official surveys of the surveyor of the

general land office, for the territory of Florida, and is intended to show the region of country which includes Dunn's lake, to elucidate the testimony of witnesses in the above entitled cause; that the Nos. 26, 27, 28, 29, 30, 31, 32, and 33, indicate the ranges, and 7, 8, 9, 10, 11, 12, 13, 14, and 15, the townships; that in township 11, ranges 26 and 27, the surveys have not been completed; and so also in township 12, range 28, and township 14, ranges 26 and 27 and 28; and the dotted lines show imaginary boundaries; that the townships are squares of six miles, and are shown by black lines intersecting each other, and these townships are divided into 36 sections, which are indicated by the pencil lines.

E. B. GOULD.

Sworn to before me, this 23d of March, 1842.

JOHN BEARD, Jr., *Clerk*.

Filed, 1844.

the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of July next, to answer Wharton Jones, a citizen of and resident in the State of Kentucky, of a plea of debt, to recover of the defendant the sum of $500 00, for harboring and concealing a slave servant belonging to the plaintiff, of the name of Henry, who had escaped from the service of plaintiff, in the State of Kentucky, after knowing that said Henry had escaped, and was a fugitive servant and slave, belonging to plaintiff. Damages $500, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United [SEAL.] States, this third day of June, 1842, and in the 66th year of the independence of the United States of America.

Attest: WM. MINER, *Clerk.*

(Endorsement.) "For harboring and concealing a slave servant, belonging to the plaintiff, of the name of Henry, who had escaped from the residence and service of plaintiff, in the State of Kentucky, after knowing that said Henry had escaped, and was a fugitive servant and slave, belonging to plaintiff.

C. FOX, *Att'y for pl'tff.*"

And afterwards, to wit, at the July term of said court, anno domini one thousand eight hundred and forty-two, being the time to which said writ was made returnable, came the marshal, to whom said writ was in form aforesaid directed, and returned the same into court here, with the following return endorsed thereon, to wit:

"Served, by leaving a copy at defendant's residence, with his wife, this day, June 21st, 1842.

DEMAS ADAMS, *Marshal.*
By ROBT. RANDS, *Dep'ty.*"

And this cause was continued. And afterwards, to wit, on the twenty-fourth day of August, in the year last aforesaid, came the plaintiff, by his attorney aforesaid, and filed in the clerk's office of said court his declaration, as follows, to wit:

"Circuit court of the United States for the district of Ohio, July term, 1842.

DISTRICT OF OHIO, *ss:*

1*st count—concealing.*

Wharton Jones, a citizen of, and resident in Kentucky, by Charles Fox, his attorney, complains of John Van Zandt, a citizen of, and resident in Ohio, was summoned to answer unto the plaintiff in a plea of debt: for that, whereas, a certain person, to wit, Andrew, aged about 30 years, Letta, aged about 30 years, on the twenty-third day of May, in the year eighteen hundred and forty-two, at Boone county, in the State of Kentucky, was the slave of and in possession of the plaintiff, and his property, and owed service, and was held to labor to the plaintiff by the laws of Kentucky, unlawfully, wrongfully and unjustly, without the license or consent, and against the will of the plaintiff, departed and

went away from, and out of the service of the plaintiff, at said Boone county, and came to the defendant at Hamilton county, in the State and district of Ohio, and was there a fugitive from labor; and the defendant well knowing that said Andrew was the slave of the plaintiff and a fugitive from labor, yet afterwards, to wit, on the day and year aforesaid, at said district, contriving, and unlawfully and unjustly intending to injure the plaintiff and to deprive him of said slave and of his service, and of the profits, benefits, and advantages that might and would otherwise have arisen and accrued to him from said slave and his service, did then and there *and there* knowingly and willingly, wrongfully, unjustly and unlawfully receive the said slave of the plaintiff into his service, and knowingly and willingly harbor, detain, conceal and keep the said slave, in consequence of which the plaintiff lost said slave, and was deprived of his services, and of all benefits, profits and advantages which might, and would have arisen and accrued to him from such slave and his service, contrary to the statute of the United States in such case made and provided, whereby the defendant forfeited the sum of five hundred dollars, to and for the use of the plaintiff; yet the defendant, though often requested, has not paid the same, nor any part thereof.

2d—concealing.

And also for that, whereas, on the day and year aforesaid, at said Boon county, a certain person, to wit, Andrew, aged about 30 years, was the slave of, and in the possession of the plaintiff, and his property, and owed service, and was held to labor to the plaintiff, by the laws of the State of Kentucky, did unlawfully, wrongfully, and unjustly, without the license or consent, and against the will of the plaintiff, depart and go away from and out of his service, to wit, at Boone county aforesaid, and came to Hamilton county, in the State and district of Ohio, to the defendant; and the defendant had notice that the said Andrew was the slave of the plaintiff, and a fugitive from labor; yet afterwards, to wit, on the day and year aforesaid, at the district aforesaid, contriving, and wrongfully and unjustly intending to injure the plaintiff, and deprive him of the said slave, and of his service, then and there, on the day and year aforesaid, at the district aforesaid, knowingly and willingly, unjustly, wrongfully, and unlawfully conceal the said slave from the plaintiff, in consequence of which the plaintiff lost said slave, and was deprived of his service, and of all profits, benefits, and advantages which might, and otherwise would have arisen, and accrued to the plaintiff from such slave and his service, contrary to the statute of the United States in such cases made and provided, whereby the defendant forfeited the sum of five hundred dollars, to and for the use of the plaintiff. Yet though often requested, he has not paid the same, nor any part thereof.

Abandoned.

And also for that, whereas, on the day and year aforesaid, at said Boone county, a certain person, to wit, Andrew, aged about 30 years, was the slave of, and in the possession of the plaintiff, and his property,

and owed service to, and was held to labor to the plaintiff, by the laws of the State of Kentucky; and the said slave, on the day and year aforesaid, did unlawfully, wrongfully, and unjustly, without the license or consent, and against the will of the plaintiff, depart from and go out of the service of the plaintiff, at Boone county aforesaid; and afterwards, to wit, on the day and year aforesaid, come to Hamilton county, in the State and district of Ohio, where he was a fugitive from labor; and the the plaintiff then and there undertook to seize and arrest the said slave as such fugitive from labor; but the said defendant, well knowing the said Andrew to be the slave of the plaintiff, and that he was a fugitive from labor as above, did knowingly, unlawfully, wrongfully, unjustly, and willingly obstruct and hinder the plaintiff from so doing; in consequence of which the said plaintiff lost said slave, and was deprived of the service of the said slave, and of all the profits, benefits, and advantage, which might, and would otherwise have arisen from such slave and his service, contrary to the form of the statute of the United States in such case made and provided, whereby the defendant forfeited the sum of five hundred dollars, to and for the use of the plaintiff: yet, though often requested, he has not paid the same, nor any part thereof.

4—*Abandoned.*

And also for that, whereas, on the day and year aforesaid, at said Boone county, a certain person, to wit, Andrew, aged about thirty years, was the slave of, and in the possession of the plaintiff, and his property, and owed service, and was held to labor to the plaintiff, in said State of Kentucky, by the laws thereof, did unlawfully, wrongfully, and unjustly, without the license or consent, and against the will of the plaintiff, depart from, and go out of the service of the plaintiff, to wit, at Boone county aforesaid; and afterwards, to wit, on the day and year aforesaid, come to Hamilton county, in the State and district of Ohio, and was there a fugitive from labor; and the plaintiff did then and there, to wit, at said district, arrest said slave as such fugitive from labor, according to the provisions of the statute of the United Sates in such case made and provided; and the defendant well knowing the said Andrew to be the slave of, and to owe service to the said plaintiff, and that said slave was a fugitive from labor, as aforesaid, did then and there knowingly and willingly rescue said fugitive from labor by force and violence, take said slave from the agents of the plaintiff, to wit, at the district aforesaid, in consequence of which the plaintiff lost the said slave and was deprived of his service for a long time, to wit, three months, and of all the profits, benefits, and advantages which might, and would otherwise have arisen and accrued to him from such slave and his services, contrary to the form of the statute of the United States in such case made and provided, whereby the defendant forfeited the sum of five hundred dollars, to and for the use of the plaintiff; yet, though often requested, the defendant has not paid the same, nor any part thereof. To the damage of the plaintiff of five hundred dollars, and therefore he sues.

CHARLES FOX, *Att'y for pl'ff.*"

And afterwards, to wit, at rules held in the clerk's office of said court for the month of September, in the year last aforesaid, came the said plaintiff, by his attorney aforesaid, and entered a rule therein against the said defendant, to plead by October rules, or default; at which time, to wit, at rules held as aforesaid for the month of October, in the year last aforesaid, came again the said plaintiff, by his attorney aforesaid, and the said defendant having failed to plead as he was ruled to do, judgment was thereupon *was thereupon* entered against him by default, according to the rules of said court, to be enquired of, &c.

And afterwards, to wit, at the December term of said court, in the year last aforesaid, this cause was continued.

And afterwards, to wit, on the fourteenth day of June, in the year of our Lord one thousand eight hundred and forty-three, came the defendant, by Messrs. Chase and Ball, his attorneys, and filed in the clerk's office of said court, his plea to the declaration of the said plaintiff, as follows, to wit:

"Circuit court U. States.

JOHN VAN ZANDT, } ads. } Plea.
WHARTON JONES. }

And the said defendant, by Chase and Ball, his attorneys, comes and defends the wrong and injury, when, &c., and says he does not owe the said sum of money above demanded, or any part thereof, in manner and form as the said plaintiff has declared against him, and of this he puts himself upon the country; and the plaintiff doth the like.

CHASE & BALL, *Att'ys for def't.*"

And afterwards, to wit, at the July term of said court, in the year last aforesaid, to wit, on Friday, the 14th day of July, came the parties aforesaid, by their attorneys, and also came a jury, who being empannelled and sworn the truth to speak, upon the issue joined, to wit: Philip Riggs, Robert N. Hawkins, James Chambers, John McMullin, E. T. Coolidge, H. W. Culbertson, Joseph Jones, James McQuillin, Jonathan Cilley, Bradbury Cilley, William J. Ferris, Edward Taylor; and the counsel not having completed their arguments, the court adjourned the jury until to-morrow morning at nine o'clock, until which time this cause is continued.

And afterwards, in this same term, to wit, on Saturday, the fifteenth day of July, came the parties aforesaid, by their attorneys, and also the jurors aforesaid; and the arguments of counsel not being completed, the court adjourned the jury until Monday morning, at nine o'clock, until which time this cause is continued.

And afterwards, in this same term, to wit, on Monday, the seventeenth day of July, came the parties aforesaid, by their attorneys, and the jurors aforesaid, and the arguments of counsel being completed, the court adjourned the jury until to-morrow morning, at nine o'clock, until which time this cause is continued.

And afterwards, in this same term, to wit, on Tuesday, the eighteenth

day of July, came the parties aforesaid, by their attorneys, and also the jurors aforesaid, and this cause being submitted to the jury by the court, the said jury now come into court, and upon their oaths do say, that the said defendant doth owe to the said plaintiff the said sum of five hundred dollars, the debt above demanded in manner and form as the said plaintiff in declaring hath alleged; and thereupon came the defendant, by Mr. Chase, of counsel, and gave notice of a motion for a new trial in the above entitled cause.

And afterwards, in this same term, to wit, on Wednesday, the twenty-sixth day of July, came the defendant, by his attorneys, Messrs. Chase and Ball, and filed in court his reasons in support of a motion for a new trial in this cause; and also his reasons in support of a motion for arrest of judgment in this cause; which said reasons are, respectively, as follows, to wit:

JOHN VAN ZANDT, ads. WHARTON JONES.

Circuit court U. States, 7th cir. and dis. of Ohio.

In debt—verdict $500.

The defendant, John Van Zandt, by his counsel, moves the court for a new trial, and assigns the following reasons:

1. The court erred in charging the jury that it was not necessary to prove that the defendant intentionally placed the colored persons in question out of view, for the purpose of eluding the search of the master or his agent, in order to establish the fact of concealment, or to prove that he received, sheltered, and placed them out of view for said purpose, in order to establish the fact of harboring; but charged that it was sufficient, if the jury believed, from the evidence, that the defendant received the colored persons into his waggon, and transported them to Bates', from Walnut Hills, with intent to facilitate their escape from their master.

2. The court erred in charging the jury that it was not necessary, in order to establish the plaintiff's right to recover, to prove actual notice to the defendant from the claimant, or some one acting in his behalf, that the persons alleged to be harbored or concealed by him were fugitives from labor, within the meaning of the act of Congress; but charged that it was sufficient if the jury should be satisfied, from the evidence, that the defendant knew that such persons were fugitives from labor.

3. The verdict is against evidence.

4. The verdict is against law.

CHASE & BALL, *Atty's for def't.*

JOHN VAN ZANDT, ads. WHARTON JONES.

Cir. court U. States, 7th cir. and dist. Ohio—In debt.

The defendant, by his counsel, moves the court to arrest judgment on the verdict rendered in this cause for the following reasons:

I. Because the plaintiff's declaration and the allegations therein contained, are insufficient in law to warrant said judgment.

1. In this, that in no court of said declaration, has the plaintiff averred that the person or persons therein described as fugitives from labor, were held to service under the laws of the State of Kentucky, and being so held, escaped from that State into the State of Ohio.

2. In this, that the act of Congress referred to in said declaration is unwarranted by, or repugnant to the Constitution of the United States, and therefore null and void.

3. That the said act, so far as it applies to the case made in the plaintiff's declaration, is repugnant to the sixth article of the ordinance for the government of the territory of the United States, northwest of the river Ohio, and therefore, so far, null and void.

4. In other respects.

II. Because the verdict rendered by the jury is general, whereas it ought to have been confined to the good count, or counts, in said declation.

CHASE & BALL, *Atty's for def't.*

And afterwards, in this same term, to wit, on Monday the seventh day of August, the plaintiff in this case having, before the cause was submitted to the jury, abandoned the third and fourth counts in his declaration, which abandonment was omitted to be entered on the journal at the time. It is ordered, that an entry of such abandonment be now entered on the journal; and the pleadings in this cause having been filed, the case came on to trial before the jury, when the opinions of the judges were opposed on the following points:

First. Whether, under the 4th section of the act of twelfth February, 1793, "respecting fugitives from justice, and persons escaping from the service of their masters, on a charge for harboring and concealing a fugitive from labor," the notice must be in writing by the claimant or his agent, stating that such person is a fugitive from labor, under the 3d section of the above act, and served on the person harboring or concealing such fugitive to make him liable to the penalty of five hundred dollars under the act.

Secondly. Whether such notice, if not in writing and served as aforesaid, must be given verbally by the claimant or his agent, to the person who harbors or conceals the fugitive; or whether to charge him, under the statute, a general notice to the public in a newspaper is necessary.

Thirdly. Whether clear proof of the knowledge of the defendant, by his own confession or otherwise, that he knew the colored person was a slave, and fugitive from labor; though he may have acquired such knowledge from the slave himself, or otherwise, is not sufficient to charge him with notice.

Fourth. Whether receiving the fugitive from labor at three o'clock in the morning, at a place in the State of Ohio, about twelve miles distant from the place in Kentucky, where the fugitive was held to labor, from a certain individual, and transporting him in a closely covered waggon, twelve or fourteen miles, so that the boy thereby escaped pursuit, and